shall be filled for the residue of the unexpired term in the manner that original appointments are made.

(9) POWERS AND DUTIES OF COUNTY DEVELOPMENTAL DISABILITIES SERVICES BOARD IN CERTAIN COUNTIES. A county developmental disabilities services board appointed under sub. (7) (a) 1. shall do all of the following:

(a) Appoint a county developmental disabilities services director, subject to the approval of each county board of supervisors which participated in the appointment of the county developmental disabilities services board, establish salaries and personnel policies for the county department of developmental disabilities services subject to the approval of each such county board of supervisors and arrange and promote local financial support for the program. Each county board of supervisors in a county with a single-county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services may delegate such appointing authority to the county developmental disabilities services board.

(am) Prepare a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of developmentally disabled individuals based upon the services designated under sub. (1). The plan shall also include the establishment of long–range goals and intermediate–range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

(b) Assist in arranging cooperative working agreements with other health, educational, vocational and welfare services: public or private, and with other related agencies.

(d) Comply with the state requirements for the program.

(e) Appoint committees consisting of residents of the county to advise the county developmental disabilities services board as it deems necessary.

(f) Develop county developmental disabilities services board operating procedures.

(g) Determine, subject to the approval of the county board of supervisors in a county with a single-county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services and with the advice of the county developmental disabilities services director appointed under par. (a), whether services are to be provided directly by the county department of developmental disabilities services or contracted for with other providers and make such contracts. The county board of supervisors in a county with a single–county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services may elect to require the approval of any such contract by the county board of supervisors in a county with a single–county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services.

(hj Assume the powers and duties of the county department of developmental disabilities services under subs. (4m) and (4r).

(i) 1. Annually identify brain–injured persons in need of services within the county.

2. Annually, no later than January 30, report to the department the age and location of those brain–injured persons who are receiving treatment.

(9b) POWERS AND DUTIES OF COUNTY DEVELOPMENTAL DISABILITIES SERVICES BOARD IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR A COUNTY ADMINISTRATOR. The county developmental disabilities services board appointed under sub. (7) (a) 2. shall:

(a) Appoint committees consisting of residents of the county to advise the board as it deems necessary.

(am) Prepare a local plan which includes an inventory of all existing resources and services and contains a plan for meeting the needs of developmentally disabled individuals based upon the services designated under sub. (1).

(b) Recommend program priorities, identify unmet service needs and prepare short–term and long–term plans and budgets for meeting such priorities and needs.

(c) Prepare, with the assistance of the county developmental disabilities director appointed under sub. (10m), a proposed budget for submission to the county executive or county administrator and a final budget for submission to the department of health and family services under s. 46.031 (1) for authorized services.

(d) Advise the county developmental disabilities services director appointed under sub. (10m) regarding purchasing and providing services and the selection of purchase of service vendors, and make recommendations to the county executive or county administrator regarding modifications in such purchasing, providing and selection.

(e) Develop county developmental disabilities services board operating procedures.

(f) Comply with state requirements.

(g) Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

(h) Advise the county developmental disabilities services director regarding coordination of local services and continuity of care.

(10) COUNTY DEVELOPMENTAL DISABILITIES SERVICES DIRECTOR IN CERTAIN COUNTIES. The county developmental disabilities services director appointed under sub. (9) (a) shall:

(am) Operate, maintain and improve the county department of developmental disabilities services.

(ar) With the county developmental disabilities services board under sub. (9), prepare:

1. Annual proposed and final budgets of all funds necessary for the program and services authorized by this section.

2. An annual report of the operation of the program.

3. Such other reports as are required by the department of health and family services and the county board of supervisors in a county with a single–county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services.

(b) Make recommendations to the county developmental disabilities services board under sub. (9) for:

1. Personnel and salaries.

2. Changes in the program and services.

(c) Evaluate service delivery.

(dj After consultation with the county developmental disabilities services board administer the duties of the county department of disabilities services under sub. (4r) (a) 2.

(c) Comply with state requirements.

(10m) COUNTY DEVELOPMENTAL DISABILITIES SERVICES DIRECTOR IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. In any county with a county executive or a county administrator in which the county board of supervisors has established a single–county department of developmental disabilities services, the county executive or county administrator shall appoint and supervise the county developmental disabilities services director. In any county with a population of 500,000 or more, the county executive or county administrator shall appoint the director of the county department of human services under s. 46.21 as the county developmental disabilities services director. The appointment is subject to confirmation by the county board of supervisors unless the county board of supervisors, by ordinance, elects to waive confirmation or unless the appointment is

made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. The county developmental disabilities services director, subject only to the supervision of the county executive or county administrator, shall:

(a) Supervise and administer any program established under this section.

(b) Determine administrative and program procedures.

(c) Determine, subject to the approval of the county board of supervisors and with the advice of the county developmental disabilities services board under sub. (9b) (e), whether services are to be provided directly by the county department of developmental disabilities services or contracted for with other providers and make such contracts. The county board of supervisors may elect to require the approval of any such contract by the county board of supervisors.

(e) Assist the county developmental disabilities services board under sub. (9b) in the preparation of the budgets required under sub. (9b) (c).

(f) Make recommendations to the county executive or county administrator regarding modifications to the proposed budget prepared by the county developmental disabilities services hoard under sub. (9b) (c).

(g) Evaluate service delivery.

(h) After consultation with the county developmental disabilities services board administer the duties of the county department of disabilities services under sub. (4r) (a) 2.

(i) Establish salaries and personnel policies of the program subject to approval of the county executive or county administrator and county board of supervisors.

(j) Perform other functions necessary to manage, operate, maintain and improve programs.

(k) Comply with state requirements.

(L) Assist in arranging cooperative working agreements with other persons providing health, education, vocational or welfare services related to services provided under this section.

(m) Arrange and promote local financial support for the program.

(n) In consultation with the county developmental disabilities services board, prepare:

1. Intermediate–range plans and budget.

2. An annual report of the operation of the program.

3. Such other reports as are required by the department of health and family services and the county board of supervisors.

(o) 1. Annually identify brain–injured persons in need of services within the county.

2. Annually, no later than January 30, 1987, and January 30 of each year thereafter, report to the department the age and location of those brain–injured persons who are receiving treatment.

(14) DUTIES OF THE DEPARTMENT OF HEALTH AND FAMILY SERVICES. The department of health and family services shall:

(a) Review requests and certify county departments of developmental disabilities services to assure that the county departments of developmental disabilities services are in compliance with this section.

(c) Periodically review and evaluate the program of each county department of developmental disabilities services.

(d) Provide consultative staff services to communities to assist in ascertaining local needs and in planning?establishing and operating programs.

(e) Develop and implement a uniform cost reporting system according to s. 46.18 (8), (9) and (10).

(g) Ensure that any county department of developmental disabilities services which elects to provide special education programs to children aged 3 years and under complies with requirements established by the department of public instruction.

(h) Organize and foster education and training programs for all persons engaged in treatment of brain–injured persons and keep a central record of the age and location of those persons treated.

(14m) DUTIES OF THE SECRETARY. The secretary shall:

(a) Maintain a listing of present or potential resources for serving the needs of the developmentally disabled, including private and public persons, associations and agencies.

(b) Collect factual information concerning the problems.

(c) Provide information, advice and assistance to communities and try to coordinate their activities on behalf of the developmentally disabled.

(d) Assist counties in obtaining professional services on a shared–time basis.

(e) Establish and maintain liaison with all state and local agencies to establish a continuum of services, consultative and informational.

(14r) DUTIES OF THE COUNCIL ON DEVELOPMENTAL DISABILITIES. (a) The council on developmental disabilities shall:

1. Designate appropriate state or local agencies for the administration of programs and fiscal resources made available to the council on developmental disabilities under federal legislation affecting the delivery of services to the developmentally disabled.

2. Perform the following responsibilities related to the state plan, for the delivery of services, that is required under 42 USC 6022, including the construction of facilities:

a. Develop, approve, and continue modification of the statewide plan.

b. Monitor and evaluate the implementation of the statewide plan.

3. Review and advise the department of health and family services on community budgets and community plans for programs affecting persons with developmental disabilities.

4. Participate in the development of, review, comment on, and monitor all state plans in the state which relate to programs affecting persons with developmental disabilities.

5. Serve as an advocate for persons with developmental disabilities.

6. Provide continuing counsel to the governor and the legislature.

7. Notify the governor regarding membership requirements of the council and if vacancies on the council remain unfilled for a significant period of time.

(b) The council may establish such reasonable procedures as are essential to the conduct of the affairs of the council.

(c) The council on developmental disabilities may or, if requested by the governor, shall coordinate recommendations of the council and the public to the governor regarding council membership.

(15) CONSTRUCTION. (a) Nothing in this scction shall be construed to mean that developmentally disabled persons are not eligible for services available from all sources.

(b) Nothing in this scction may be deemed to require a county department of developmental disabilities services to provide education, recreation, counseling, information or referral services to any individual with a developmental disability or to his or her family.

(c) 1. Any reference in any law to a county department of developmental disabilities services applies to the county department under s. 46.23 in its administration of the powers and duties of the county department of developmental disabilities services under s. 46.23 (3) (b), if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1. **Any** reference in any law to a county department of developmental disabilities services applies to a county department under s. 46.21 (2m) in its administration of the powers and

duties of the county department of developmental disabilities services under s. 46.21 (2m) (b) 1. a.

2. a. Any reference in any law to a county developmental disabilities services director appointed under sub. (9) (a) applies to the director of a county department appointed under s. 46.23 (5) (f) in his or her administration of the powers and duties of that county developmental disabilities services director, if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1.

b. Any reference in any law to a county developmental disabilities services director appointed under sub. (10m) (intro.) applies to the director of a county department appointed under s. 46.23 (6m) (intro.), if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1. Any reference in any law to a county developmental disabilities services director appointed under sub. (10m) (intro.) applies to the director of a county department appointed under s. 46.21 (1m) (a) in his or her administration of the powers and duties of that county developmental disabilities services director.

3. a. Any reference in any law to a county developmental disabilities services board appointed under sub. (7) (a) 1. applies to the board of a county department appointed under s. 46.23 (4) (b) 1. in its administration of the powers and duties of that county developmental disabilities services board, if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1.

b. Except as provided in subd. 3. c., any reference in any law to a county developmental disabilities services board appointed under sub. (7) (a) 2. applies to the board of a county department appointed under s. 46.23 (4) (b) 2. in its administration of the powers and duties of that county developmental disabilities services board, if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1.

c. Any reference in any law to a county developmental disabilities services board appointed under sub. (7) (a) 2. is limited, with respect to the county department of human services under s. 46.21 (2m), to the powers and duties of the county developmental services board as specified in sub. (9b).

(16) ADMINISTRATIVE STRUCTURE. Rules promulgated by the secretary under s. 51.42 (7) (b) shall apply to services provided through county departments of developmental disabilities services under this section.

History: 1971 c. 307.322; 1973 c. 90.333; 1975 c. 39. 199,430; 1977 c. 26 ss. 39, 75; 1977 c. 29; 1977 c. 354 s. 101; 1977 c. 418; 1977 c. 428 s. 85, 86, 115; 1979 c. 32, 117,221,330,355; 1981 c. 20, 93, 329; 1983 a. 27, 365, 375, 524; 1985 a. 29 ss. 1094 to 1105m, 3200 (56) (a); 1985 a. 120, 176.307.332; 1987 a. 27: 1989 a. 31, 56. 107,262; 1991 a. 39, 274,315; 1993 a. 16, 83; 1995 a. 27 ss. 3266111,9116(5). 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 225, 352, 417; 1997 a. 27, 35, 164.252; 1999 a. 9: 2001 a. 16, 59.

***Cross* Reference:** See also chs. HFS 61 and 65, Wis. adm. code.

The corporation counsel should provide legal advice and representation to 51.12 and 51.437 boards as well as to the county board. 63 Atty. Gen. 468.

Liability, reimbursement, and collection for services provided under ss. 51.42 and 51.437 programs are discussed. 63 Atty. Gen. 560, 65 Atty. Gen. 49.

The county board of supervisors may require its approval of contracts for purchase of services by a community services board if it so specified in its coordinated plan and budget. Otherwise it may not. 69 Atty. Gen. 128.

Menominee Tribe members are eligible to participate in voluntary programs, but the state cannot accept tribe members into involuntary programs on the basis of tribal court orders alone. 70 Atty. Gen. 219.

A multicounty 51.42/51.437 board may retain private legal counsel only when the corporation counsel of each county, or the district attorney of each county not having a corporation counsel, notifies the board that he or she is unable to provide specific services in a timely manner. 73 Atty. Gen. 8.

51.44 Early intervention services. (1) In this section:

(ag) "Case management services" means activities carried out by a service coordinator to assist and enable a child eligible for early intervention services under this section and the child's family to receive the rights and services authorized to be provided under the early intervention program under this section.

(ar) "Individualized family service plan" means a written plan for providing early intervention services to an eligible child and the child's family.

(b) "Local health department" has the meaning given in s. 250.01 (4).

(c) "Multidisciplinary evaluation" means the process used by qualified professionals to determine eligibility for early intervention services under this section based on the child's developmental status, the child's health, physical condition and mental condition or the child's atypical development.

(1m) The department is the lead agency in this state for the development and implementation of a statewide system of coordinated, comprehensive multidisciplinary programs to provide appropriate early intervention services under the requirements of 20 USC 1476.

(3) (a) From the appropriations under s. 20.435 (7) (bt) and (nL) the department shall allocate and distribute funds to counties to provide or contract for the provision of early intervention services to individuals eligible to receive the early intervention services.

(b) Funds that are distributed to counties under par. (a) may not be used to supplant funding from any other source.

(c) No county may contribute less funding for early intervention services under this section than the county contributed for early intervention services in 1999, except that, for a county that demonstrated extraordinary effort in 1999, the department may waive this requirement and establish with the county a lesser required contribution.

(4) Each county board of supervisors shall designate the appropriate county department under s. 46.21, 46.23 or 51.437, the local health department of the county or another entity as the local lead agency to provide early intervention services under the funding specified in sub. (3).

(5) The department shall do all of the following:

(a) Promulgate rules for the statewide implementation of the program under this section that do all of the following:

1. Specify the population of children who would be eligible for services under the program.

2. Define the term "early intervention services".

3. Establish personnel standards and a comprehensive plan for the development of personnel providing services in the program.

4. Establish procedures for the resolution of complaints by clients in the program.

5. Specify data collection requirements, including a system for making referrals to service providers.

6. Establish monitoring and supervision authority.

7. Establish policies and procedures for the implementation of individual family services plans and case management services.

8. Develop requirements for local coordination and interagency agreements at state and local levels.

9. Establish requirements for public awareness activities and a statewide directory of services.

(am) Promulgate rules that define the term "service coordinator".

(b) Ensure that the children eligible for early intervention services under this section receive all of the following services:

1. A multidisciplinary evaluation.

2. An individualized family service plan.

3. Assignment of a service coordinator, as defined by the department by rule, to provide case management services.

(c) Annually, submit to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) a report on the department's progress toward full implementation of

the program under this section, including the progress of counties in implementing goals for participation in 5th–year requirements under 20 USC 1476.

History: 1991 a. 39,269; 1993 **a.** 16.27: 1995 **a.** 27; 1997 a. 27; 2001 **a.** 16.

Cross Reference: See also **ch. HFS 90, Wis. adm. code.**

51.45 Prevention and control of alcoholism. (1) DECLARATION OF POLICY. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcohol beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

(2) DEFINITIONS. As used in this section, unless the context otherwise requires:

(b) "Approved private treatment facility" means a private agency meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(c) "Approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this section through a contract with the department under sub. (7) (g) or with the county department under **s.** 51.42 (3) (ar) 2., and meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(cm) "County department" means a county department under s. 51.42.

(cr) "Designated person" means a person who performs, in part, the protective custody functions of a law enforcement officer under sub. (11), operates under an agreement between a county department and an appropriate law cnforcenient agency under sub. (11), and whose qualifications are established by the county department.

(d) "Incapacitated by alcohol" means that a person, as a result of the use of or withdrawal from alcohol, is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of making a rational decision, as evidenced objectively by such indicators as extreme physical debilitation, physical harm or threats of harm to himself or herself or to any other person, or to property.

(e) "Incompetent pcrson" means a person who has been adjudged incompetent by the circuit court.

(f) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(g) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, surgical, psychiatric. psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons, and psychiatric, psychological and social service care which may be extended to their families. Treatment may also include, but shall not be replaced by, physical detention of persons, in an approved treatmcnt facility, who are involuntarily committed or detained under sub. (12) or (13).

(2m) APPLICABILITY TO MINORS. (a) Except as otherwise stated in this section, this section shall apply equally to minors and adults.

(b) Subject to the limitations specified in s. 51.47, a minor may consent to treatment under this section.

(c) In proceedings for the commitment of a minor under sub. (12) or (13):

1. The court may appoint a guardian ad litem for the minor; and

2. The parents or guardian of the minor, if known, shall receive notice of all proceedings.

(3) POWERS OF DEPARTMENT. To implement this section, the department may:

(a) Plan, establish and maintain treatment programs as necessary or desirable.

(b) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies. organizations, and individuals to pay them for services rendered or furnished to alcoholics or intoxicated persons.

(c) Keep records and engage in research and the gathering of relevant statistics.

(d) Provide information and referral services as optional elements of the comprehensive program it develops under sub. (7).

(4) DUTIES OF DEPARTMENT. The department shall:

(a) Develop, encourage and foster statewide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes.

(b) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in prevention of alcoholism and treatment of alcoholics and intoxicated persons.

(c) Assure that the county department provides treatment for alcoholics and intoxicated persons in county, town and municipal institutions for the detention and incarceration of persons charged with or convicted of a violation of a state law or a county, town or municipal ordinance.

(d) Cooperate with the department of public instruction, local boards of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education.

(e) Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of alcohol.

(f) Develop and implement and assure that county departments develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated pcrsons, which program shall include the dissemination of information concerning the nature and effects of alcohol.

(g) Organize and foster training programs for all persons engaged in treatmcnt of alcoholics and intoxicated persons.

(h) Sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons, and serve as a clearinghouse for information relating to alcoholism.

(i) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

(j) Advise the governor or the state health planning and development agency under P.L. 93–641, as amended, in the preparation of a comprehensive plan for treatment of alcoholics and intoxicated persons for inclusion in the state's comprehensive health plan.

(k) Review all state health, welfare and treatment plans to be submitted for federal funding under federal legislation, and advise the governor or the state health planning and development agency under P.L. 93–641, as amended, on provisions to be included relating to alcoholics and intoxicated persons.

(L) Develop and maintain, in cooperation with other state agencies, local governments and businesses and industries in the state, appropriate prevention, treatment and rehabilitation programs and services for alcohol abuse and alcoholism among employees thereof.

(m) Utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics voluntarily to undergo treatment.

(n) Cooperate with the department of transportation in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

(o) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment.

(p) Submit to the governor or the state health planning and development agency under P.L. 93–641, as amended, an annual report covering the activities of the department relating to treatment of alcoholism.

(q) Gather information relating to all federal programs concerning alcoholism, whether or not subject to approval by the department, to assure coordination and avoid duplication of efforts.

(7) COMPREHENSIVE PROGRAM FOR TREATMENT. (a) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics and intoxicated persons.

(b) The program of the department shall include:

1. Emergency medical treatment provided by a facility affiliated with or part of the medical service of a general hospital.

2. Nonmedical emergency treatment provided by a facility having a written agreement with a general hospital for the provision of emergency medical treatment to patients as may be necessary.

3. Inpatient treatment.

4. Intermediate treatment as a part–time resident of a treatment facility.

5. Outpatient and follow–up treatment.

6. Extended care in a sheltered living environment with minimal staffing providing a program emphasizing at least one of the following elements: the development of self–care, social and recreational skills or prevocational or vocational training.

7. Prevention and intervention services.

(c) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under subs. (10) to (13). Treatment may not be provided at a correctional institution except for inmates.

(d) The superintendent of each facility shall make an annual report of its activities to the secretary in the form and manner the secretary specifies.

(e) **All** appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(f) The secretary shall prepare, publish and distribute annually a list of all approved public and private treatment facilities.

(g) The department may contract for the use of any facility as an approved public treatment facility if the secretary considers this to be an effective and economical course to follow.

(8) STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES. (a) The department shall establish minimum standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, except as provided in s. 51.032, and **fix** the fees to be charged by the department for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall distinguish between facilities rendering different modes of treatment. In setting standards. the deparhnent shall consider the residents' needs and abilities, the services to be provided by the facility, and the relationship between the physical structure and the objectives of the program. Nothing in this subsection shall prevent county departments from establishing reasonable higher standards.

(b) The department periodically shall make unannounced inspections of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(c) Approval of a facility must be secured under this section before application for a grant–in–aid for such facility under s. 51.423 or before treatment in any facility is rendered to patients.

(d) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules and information the department reasonably requires, including any data or infomation specified under s. 46.973 (2m). An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

(e) The department, after notice and hearing, may under this subsection suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.

(f) The circuit court may restrain any violation of this section, review any denial, restriction or revocation of approval under this subsection, and grant other relief required to enforce its provisions.

(9) ACCEPTANCE FOR TREATMENT; RULES. The secretary shall promulgate rules for acceptance of persons into the treatment program, considering available treatment resources and facilities: for the purpose of early and effective treatment of alcoholics and intoxicated persons. In promulgating the rules the secretary shall be guided by the following standards:

(a) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(b) **A** patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless the patient is found to require inpatient treatment.

(c) No person may be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment.

(d) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(c) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

(10) VOLUNTARY TREATMENT OF ALCOHOLICS. (a) An adult alcoholic may apply for voluntary treatment directly to an approved public treatment facility. If the proposed patient is an incompetent person who has not been deprived of the right to contract under subch. I of ch. 880, the person or a legal guardian or other legal representative may make the application. If the proposed patient is an incompetent person who has been deprived of the right to contract under subch. I of ch. 880, a legal guardian or other legal representative may make the application.

(am) **A** minor may apply for voluntary treatment directly to an approved public treatment facility, but only for those forms of treatment specified in sub. (7) (b) 5. and 7. Section 51.13 shall govern voluntary admission of a minor alcoholic to an inpatient treatment facility.

(b) Subject to rules promulgated by the department, the superintendent in charge of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the superintendent, subject to rules promulgated by the department, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(c) If a patient receiving inpatient care leaves an approved public treatment facility, the patient shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the superintendent in charge of the treatment facility that the

patient is an alcoholic or intoxicated person who requires help, the county department shall arrange for assistance in obtaining supportive services and residential facilities. If the patient is an incompetent person the request for discharge from an inpatient facility shall be made by a legal guardian or other legal representative or by the incompetent if he or she was the original applicant.

(d) If a patient leaves an approved public treatment facility, with or against the advice of the superintendent in charge of the facility, the county department may make reasonable provisions for the patient's transportation to another facility or to his or her home or may assist the patient in obtaining temporary shelter.

(e) This subsection applies only to admissions of alcoholics whose care and treatment is to be paid for by the department or a county department.

(11) TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND OTHERS INCAPACITATED BY ALCOHOL. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. Any law enforcement officer, or designated person upon the request of a law enforcement officer, may assist a person who appears to be intoxicated in a public place and to be in need of help to his or her home, an approved treatment facility or other health facility, if such person consents to the proffered help. Section 51.13 shall govern voluntary admission of an intoxicated minor to an inpatient facility under this paragraph.

(b) A person who appears to be incapacitated by alcohol shall be placed under protective custody by a law enforcement officer. The law enforcement officer shall either bring such person to an approved public trcatment facility for emergency treatment or request a designated person to bring such person to the facility for emergency treatment. If no approved public treatment facility is readily available or if, in the judgment of the law enforcement officer or designated person, the person is in need of emergency medical treatment, the law enforcement officer or designated person upon the request of the law enforcement officer shall take such person to an emergency medical facility. The law enforcement officer or designated person, in detaining such person or in taking him or her to an approved public treatment facility or emergency medical facility, is holding such person under protective custody and shall make every reasonable effort to protect the person's health and safety. In placing the person under protective custody the law enforcement officer may search such person for and seize any weapons. Placement under protective custody under this subsection is not an arrest. No entry or other record shall be made to indicate that such person has been arrested or charged with a crime. A person brought to an approved public treatment facility under this paragraph shall be deemed to be under the protective custody of the facility upon arrival.

(bm) If the person who appears to be incapacitated by alcohol under par. (b) is a minor, either a law enforcement officer or a person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take the minor into custody as provided in par. (b).

(c) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by trained staff as soon as practicable in accordance with a procedure developed by the facility in consultation with a licensed physician. The person may then be admitted as a patient or referred to another treatment facility or to an emergency medical facility, in which case the county department shall make provision for transportation. Upon arrival, the person shall be deemed to be under the protective custody of the facility to which he or she has been referred.

(d) A person who by examination pursuant to par. (c) is found to be incapacitated by alcohol at the time of admission, or to have become incapacitated at any time after admission, shall be detained at the appropriate facility for the duration of the incapacity but may not be detained when no longer incapacitated by alcohol, or if the person remains incapacitated by alcohol for more than 72 hours after admission as a patient, exclusive of Saturdays, Sundays and legal holidays, unless he or she is committed under sub. (12). A person may consent to remain in the facility as long as the physician or official in charge believes appropriate.

(e) The county department shall arrange transportation home for a person who was brought under protective custody to an approved public treatment facility or emergency medical facility and who is not admitted, if the home is within 50 miles of the facility. If the person has no home within 50 miles of the facility, the county department shall assist him or her in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility. the family or next of kin shall be notified as promptly as possible unless an adult patient who is not incapacitated requests that no notification be made.

(g) Any law enforcement officer, designated person or officer or employee of an approved treatment facility who acts in compliance with this section is acting in the course of official duty and is not criminally or civilly liable for false imprisonment.

(h) Prior to discharge, the patient shall be informed of the benefits of further diagnosis and appropriate voluntary treatment.

(i) No provision of this section may be deemed to require any emergency medical facility which is not an approved private or public treatment facility to provide to incapacitated persons nonmedical services including, but not limited to, shelter, transportation or protective custody.

(12) EMERGENCY COMMITMENT. (a) An intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or a person who is incapacitated by alcohol, may be committed to the county department and brought to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack ofjudgment as to the need for treatment.

(b) The physician, spouse, guardian or a relative of the person sought to be Committed, or any other responsible person, may petition a circuit court commissioner or the circuit court of the county in which the person sought to be committed resides or is present for commitment under this subsection. The petition shall:

1. State facts to support the need for emergency treatment;

2. State that the person is a child or state facts sufficient for a determination of indigency of the person; and

3. Be supported by one or more affidavits which aver with particularity the factual basis for the allegations contained in the petition.

(c) Upon receipt of a petition under par. (b), the circuit court commissioner or court shall:

1. Determine whether the petition and supporting affidavits sustain the grounds for commitment and dismiss the petition if the grounds for commitment are not sustained thereby. If the grounds for commitment arc sustained by the petition and supporting affidavits, the court or circuit court commissioner shall issue an order temporarily committing the person to the custody of the county department pending the outcome of the preliminary hearing under sub. (13) (d).

2. Assure that the person sought to be committed is represented by counsel and, if the person claims or appears to be indigent, refer the person to the authority for indigency determinations specified under s. 977.07 (1) or, if the person is a child, refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4).

3. Issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and bring him or her to an approved public treatment facility designated by the county department, if the person is not detained under sub. (11).

4. Set a titne for a preliminary hearing under sub. (13) (d), such hearing to be held not later than 48 hours after receipt of a petition under par. (b), exclusive of Sahirdays, Sundays and legal holidays. If at such time the person is unable to assist in the

defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(dj Upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication under s. 51.61 (6), the exact time and place of the preliminary hearing under sub. (13) (d), and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the patient's immediate family if they can be located and may be deferred until the patient's incapacitated condition, if any, has subsided to the point where the patient is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the patient may be questioned to determine immediate medical needs. The patient may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the county department to another appropriate public or private treatment facility, until discharged under par. (e).

(e) When on the advice of the treatment staff the superintendent of the facility having custody of the patient determines that the grounds for commitment no longer exist, he or she shall discharge a person committed under this subsection. No person committed under this subsection shall be detained in any treatment facility beyond the time set for a preliminary hearing under par. (c) 4. If a petition for involuntary commitment under sub. (13) has been filed and a finding of probable cause for believing the patient is in need of commitment has been made undcr sub. (13) (d), the person may be detained until the petition has been heard and determined.

(f) **A** copy of the written application for commitment and all supporting affidavits shall be given to the patient at the time notice of rights is given under par. (dj by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

(13) INVOLUNTARY COMMITMENT. (a) **A** person may be committed to the custody of the county department by the circuit court upon the petition of 3 adults, at least one of whom has personal knowledge of the conduct and condition of the person sought to be committed. **A** refusal to undergo treatment shall not constitute evidence of lack of judgment as to the need for treatment. The petition for commitment shall:

1. Allege that the condition of the person is such that he or she habitually lacks self–control as to the use of alcohol beverages, and uses such beverages to the extent that health is substantially impaired or endangered and social or economic functioning is substantially disrupted;

2. Allege that such condition of the person is evidenced by a pattern of conduct which is dangerous to the person or to others;

3. State that the person is a child or state facts sufficient for a determination of indigency of the person;

4. Be supported by the affidavit of each petitioner who has personal knowledge which avers with particularity the factual basis for the allegations contained in the petition; and

5. Contain a statement of each petitioner who does not have personal knowledge which provides the basis for his or her belief.

(b) Upon receipt of a petition under par. (a), the court shall:

1. Determine whether the petition and supporting affidavits meet the requirements of par. (a) and dismiss the petition if the requirements of par. (a) are not met thereby. If the person has not been temporarily committed under sub. (12) (c) and the petition and supporting affidavits meet the requirements of par. (a), the court may issue an order temporarily committing the person to the custody of the county department pending the outcome of the preliminary hearing under par. (d).

2. Assure that the person is represented by counsel and, if the person claims or appears to be indigent, refer the person to the authority for indigency determinations specified under s. 977.07 (1j or, if the person is a child, refer that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4). The person shall be represented by counsel at the preliminary hearing under par. (d). The person may, with the approval of the court, waive his or her right to representation by counsel at the full hearing under par. (f).

3. If the court orders temporary commitment, issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and to bring the person to an approved public treatment facility designated by the county department, if the person is not detained under sub. (11) or (12).

4. Set a time for a preliminary hearing under par. (d). If the person is taken into protective custody, such hearing shall be held not later than 72 hours after the person arrives at the approved public treatment facility, exclusive of Saturdays, Sundays and legal holidays. If at that time the person is unable to assist in the defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours. exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(c) Effective and timely notice of the preliminary hearing, together with a copy of the petition and supporting affidavits under par. (a), shall be given to the person unless he or she has been taken into custody under par. (b), the spouse or legal guardian if the person is incompetent, the person's counsel and the petitioner. The notice shall include a written statement of the person's right to an attorney, the right to trial by jury, the right to be examined by a physician, and the standard under which he or she may be Committed under this section. If the person is taken into custody under par. (b), upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment undcr sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication under s. 51.61 (6), the exact time and place of the preliminary hearing under par. (d), the right to trial by jury, the right to be examined by a physician and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the person's immediate family if they can be located and may be deferred until the person's incapacitated condition, if any, has subsided to the point where the person is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the person may be questioned to determine immediate medical needs. The person may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the county department to another appropriate public or private treatment facility, until discharged under this subsection. **A** copy of the petition and all supporting affidavits shall be given to the person at the time notice of rights is given under this paragraph by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

(d) Whenever it is desired to involuntarily commit a person, a preliminary hearing shall be held under this paragraph. The purpose of the preliminary hearing shall be to determine if there is

probable cause for believing that the allegations of the petition under par. (a) are true. The person shall be represented by counsel at the preliminary hearing and, if the person is a child or is indigent, counsel shall timely be appointed at public expense, as provided in s. 967.06 and ch. 977. Counsel shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the preliminary hearing. The person shall be present at the preliminary hearing and shall be afforded a meaningful opportunity to be heard. Upon failure to make a finding of probable cause under this paragraph, the court shall dismiss the petition and discharge the person from the custody of the county department.

(dgj The court shall proceed as if a petition were filed under **s.** 51.20 (Ij if all of the following conditions are met:

1. The petitioner's counsel notifies all other parties and the court, within a reasonable time prior to the hearing, of his or her intent to request that the court proceed as if a petition were filed under **s.** 51.20 (1).

2. The court determines at the hearing that there is probable cause to believe that the subject individual is a fit subject for treatment under **s.** 51.20 (1).

(dmj For the purposes of this section, duties to be performed by a court shall be carried out by the judge of such court or a circuit court commissioner of such court who is designated by the chief judge to so act, in all matters prior to a final hearing undcr this subsection.

(e) Upon a finding of probable cause under par. (d), the court shall fix a date for a full hearing to be held within 14 days. An extension of not more than 14 days may be granted upon motion of the person sought to be committed upon a showing of cause. Effective and timely notice of the full hearing. the right to counsel, the right to jury trial and the standards under which the person may be committed shall be given to the person, the immediate family other than a petitioner under par. (a) or sub. (12) (b) if they can be located, the spouse or legal guardian if the person is incompetent, the superintendent in charge of the appropriate approved public treatment facility if the person has been temporarily committed under par. (b) or sub. (12), the person's counsel, unless waived, and to the petitioner under par. (a). Counsel, or the person if counsel is waived, shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the full hearing on commitment, and shall be given the names of all persons who may testify in favor of commitment and a summary of their proposed testimony at least 96 hours before the full hearing, exclusive of Saturdays, Sundays and legal holidays.

(f) The hearing shall be open, unless the person sought to be committed or the person's attorney moves that it be closed, in which case only persons in interest, including representatives of the county department in all cases, and their attorneys and witnesses may be present. At the hearing the jury, or, if trial by jury is waived, the court, shall consider all relevant evidence, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. Ordinary rules of evidence shall apply to any such procccding. The person whose commitment **is** sought shall be present and shall be given an opportunity to be examined by a court–appointed licensed physician. If the person refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the county department for a period of not more than 5 days for purposes of diagnostic examination.

(gj 1. The court shall make an order of commitment to the county department if, after hearing all relevant evidence, including the results of any diagnostic examination, the trier of fact finds all of the following:

a. That the allegations of the pctition undcr par. (a) have been established by clear and convincing evidence.

b. That there is a relationship between the alcoholic condition and the pattern of conduct during the 12–month period immediately preceding the time of petition which is dangerous to the person or others and that this relationship has been established to a reasonable medical certainty.

c. That there is an extreme likelihood that the pattern of conduct will continue or repeat itself without the intervention of involuntary treatment or institutionalization.

2. The court may not order commitment of a person unless it is shown by clear and convincing evidence that there is no suitable alternative available for the person and that the county department is able to provide appropriate and effective treatment for the individual.

(h) A person committed under this subsection shall remain in the custody of the county department for treatment for a period set by the court, but not to exceed 90 days. During this period of commitment the county department may transfer the person from one approved public treatment facility or program to another as provided in par. (k). At the end of the period set by the court, the person shall be discharged automatically unless the county department before expiration of the period obtains a court order for recommitment upon the grounds set forth in par. (a) for a further period not to exceed 6 months. If after examination it is determined that the person is likely to inflict physical harm on himself or herself or on another. the county department shall apply for recommitment. Only one recommitment order under this paragraph is permitted.

(j) Upon the filing of a petition for recommitment under par. (h). the court shall fix a date for a recommitment hearing within 10 days, assure that the person sought to be recommitted is represented by counsel and, if the person is indigent, appoint counsel for him or her, unless waived. The provisions of par. (e) relating to notice and to access to records, names of witnesses and summaries of their testimony shall apply to recommitment hearings under this paragraph. At the recommitment hearing, the court shall proceed as provided under pars. (f) and (g).

(kj The county department shall provide for adequate and appropriate treatment of a person committed to its custody. Any person committed or recommitted to custody may be transferred by the county department from one approved public treatment facility or program to another upon the written application to the county department from the facility or program treating the person. Such application shall state the reasons why transfer to another facility or program is necessary to meet the treatment needs of the person. Notice of such transfer and the reasons therefor shall be given to the court, the person's attorney and the person's immediate family, if they can be located.

(L) If an approved private treatment facility agrees with the request of a competent patient or a parent, sibling, adult child, or guardian to accept the patient for treatment, the county department may transfer the person to the private treatment facility.

(m) **A** person committed under this section may at any time seek to be discharged from commitment by habeas corpus proceedings.

(n) The venue for proceedings under this subsection is the place in which the person to be committed resides or is present.

(o) All fees and expenses incurred under this section which are required to be assumed by the county shall be governed by **s.** 51.20 (19).

(p) A record shall be made of all proceedings held under this subsection. Transcripts shall be made available under SCR 71.04. The county department may in any case request a transcript.

(14) CONFIDENTIALITY OF RECORDS OF PATIENTS. (a) Except as otherwise provided in **s.** 51.30, the registration and treatment records of alcoholism treatment programs and facilities shall remain confidential and are privileged to the patient. The application of s. 51.30 is limited by any rule promulgated under s. 51.30

(4) (c) for the purpose of protecting the confidentiality of alcoholism treatment records in conformity with federal requirements.

(b) Any person who violates this subsection shall forfeit not more than $5,000.

(15) CIVIL RIGHTS AND LIBERTIES. (a) Except as provided in s. 51.61 (2), a person being treated under this section does not thereby lose any legal rights.

(b) No provisions of this section may be deemed to contradict any rules or regulations governing the conduct of any inmate of a state or county correctional institution who is being treated in an alcoholic treatment program within the institution.

(c) A private or public general hospital may not refuse admission or treatment to a person in need of medical services solely because that person is an "alcoholic", "incapacitated by alcohol" or is an "intoxicated person" as defined in sub. (2). This paragraph does not require a hospital to admit or treat the person if the hospital does not ordinarily provide the services required by the person. A private or public general hospital which violates this paragraph shall forfeit not more than $500.

(16) PAYMENT FOR TREATMENT. (a) Liability for payment for care, services and supplies provided under this section, the collection and enforcement of such payments, and the adjustment and settlement with the several counties for their proper share of all moneys collected under s. 46.10, shall be governed exclusively by s. 46.10.

(b) Payment for treatment of persons treated under s. 302.38 shall be made under that section.

(c) Payment of attorney fees for appointed attorneys in the case of children and indigents shall be in accordance with ch. 977.

(17) APPLICABILITY OF OTHER LAWS: PROCEDURE. (a) Nothing in this section affects any law, ordinance or rule the violation of which is punishable by fine, forfeiture or imprisonment.

(b) All administrative procedure followed by the secretary in the implementation of this section shall be in accordance with ch. 227.

(18) CONSTRUCTION. This section shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this section insofar as possible among states which enact similar laws.

(19) SHORT TITLE. This section may be cited as the "Alcoholism and Intoxication Treatment Act".

History: 1973 c. 198; 1975 c. 200.428: 1975 c. 430 s. 80; 1977 c. 29: 1977 c. 187 ss. 44, 134,135: 1977 c. 103 s. 106; 1977 c. 428; 1977 c. 449 s. 497: Sup. Ct. Order. 83 Wis. 2d xiii (1987); 1979 c. 33 s. 92 (11); Sup. Ct. Order. eff. 1–1–80; 1979 c. 221 ss. 417,2200 (20); 1979 c. 300,331,356; 1981 c. 20; 1981 c. 79 s. 17: 1981 c. 289, 314; 1983 a. 27 ss. 1116 to 1121, 2202 (20); 1985 a. 29 s. 3202 (56); 1985 a. 139; 1985 a. 176 ss. 533 to 556.615: 1985 a. 265; 1985 a. 332 s. 251 (1); 1987 a. 339,366; 1989 a. 31,336,359: 1991 a. 39; 1993 a. 16, 27,213,451,490; 1995 a. 27 ss. 3268,3269, 9145 (1); 1995 a. 77,225; 1997 a. 27, 35, 237; 1999 a. 9; *1001* a. 61.

Cross Reference: See also ch. HFS 75, Wis. adm. code.

Judicial Council Note, **1981:** Reference to a "writ" of habeas corpus in sub. (13) (m) has been removed because that remedy is now available in an ordinary action. Sees. 781.01, stats., and the note thereto. [Bill 613–A]

A one–person petition under sub. (12) is sufficient for commitment only until the preliminary hearing; a 3–person petition under sub. (13) is required for commitment beyond that time period. In Matter of B.A.S.: State v. B.A.S. 134 Wis. 2d 291,397 N.W.2d 114 (Ct. App. 1986).

Criminal charges of bail jumping based solely on the consumption of alcohol do not violate this section. Sub. (1) is intended only to present prosecutions for public drunkenness. State ex rel. Jacobus v. State, 208 Wis. 2d 39,559 N.W.2d 900 (1997).

The requirement under sub. (13) (e) that a person sought to be committed have access to records and reports does not require the county to file the specified records with the trial court prior to a final hearing. County of Dodge v. Michael J.K. 209 Wis. 2d 499,564 N.W.2d 350 (Ct. App. 1997).

Persons incapacitated by alcohol who engage in disorderly conduct in a treatment facility may be so charged, but not merely for the purpose of arranging for their confinement in jail for security during detoxification. 64 Atty. Gen. 161.

The revision of Wisconsin's law of alcoholism and intoxication. Robb, 58 MLR 88.

Wisconsin's new alcoholism act encourages early voluntary treatment. 1974 WBB No. 3.

51.46 Priority for pregnant women for private treatment for alcohol or other drug abuse. For inpatient or outpatient treatment for alcohol or other drug abuse, the first priority for services that are available in privately operated facilities, whether on a voluntary or involuntary basis, is for pregnant women who suffer from alcoholism, alcohol abuse or drug dependency.

History: 1997 a. 292.

51.47 Alcohol and other drug abuse treatment for minors without parental consent. (1) Except as provided in subs. (2) and (3), any physician or health care facility licensed, approved, or certified by the state for the provision of health services may render preventive, diagnostic, assessment, evaluation, or treatment services for the abuse of alcohol or other drugs to a minor 12 years of age or over without obtaining the consent of or notifying the minor's parent or guardian and may render those services to a minor under 12 years of age without obtaining the consent of or notifying the minor's parent or guardian, but only if a parent with legal custody or guardian of the minor under 12 years of age cannot be found or there is no parent with legal custody of the minor under 12 years of age. An assessment under this subsection shall conform to the criteria specified in s. 938.547 (4). Unless consent of the minor's parent or guardian is required under sub. (2), the physician or health care facility shall obtain the minor's consent prior to billing a 3rd party for services under this section. If the minor does not consent, the minor shall be solely responsible for paying for the services, which the department shall bill to the minor under s. 46.03 (18) (b).

(2) The physician or health care facility shall obtain the consent of the minor's parent or guardian:

(a) Before performing any surgical procedure on the minor, unless the procedure is essential to preserve the life or health of the minor and the consent of the minor's parent or guardian is not readily obtainable.

(b) Before administering any controlled substances to the minor, except to detoxify the minor under par. (c).

(c) Before admitting the minor to an inpatient treatment facility, unless the admission is to detoxify the minor for ingestion of alcohol or other drugs.

(d) If the period of detoxification of the minor under par. (c) extends beyond 72 hours after the minor's admission as a patient.

(3) The physician or health care facility shall notify the minor's parent or guardian of any services rendered under this section as soon as practicable.

(4) No physician or health care facility rendering services under sub. (1) is liable solely because of the lack of consent or notification of the minor's parent or guardian.

History: 1979 c. 331; 1985 a. 281; 2001 a. 16.

Except for those services for which parental consent is necessary under sub. (2), a physician or health care facility may release outpatient or detoxification services infonnation only with the consent of a minor patient, provided the minor is twelve years of age or over. 77 Atty. Gen. 187.

51.48 Alcohol and other drug testing, assessment, and treatment of minor without minor's consent. A minor's parent or guardian may consent to have the minor tested for the presence of alcohol or other drugs in the minor's body or to have the minor assessed by an approved treatment facility for the minor's abuse of alcohol or other drugs according to the criteria specified in s. 938.547 (4). If, based on the assessment, the approved treatment facility determines that the minor is in need of treatment for the abuse of alcohol or other drugs, the approved treatment facility shall recommend a plan of treatment that is appropriate for the minor's needs and that provides for the least restrictive form of treatment consistent with the minor's needs. That treatment may consist of outpatient treatment, day treatment: or, if the minor is admitted in accordance with s. 51.13, inpatient treatment. The parent or guardian of the minor may consent to the treatment recommended under this section. Consent of the minor for testing, assessment, or treatment under this section is not required.

History: 1999 a. 9: 2001 a. 16.

51.59 Incompetency not implied. (1) No person is deemed incompetent to manage his or her affairs, to contract, to

hold professional, occupational or motor vehicle operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to exercise any other civil right solely by reason of his or her admission to a facility in accordance with this chapter or detention or commitment under this chapter.

(2) This section does not authorize an individual who has been involuntarily committed or detained under this chapter to refuse treatment during such commitment or detention, except as provided under s. 51.61 (1) (g) and (h).

History: 1977 c. 428; 1987 a. 366.

51.61 Patients rights. (1) In this section, "patient" means any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including any individual who is admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980, or who is transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment for those conditions through the department or a county department under s. 51.42 or 51.437 or in a private treatment facility. "Patient" does not include persons committed under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In private hospitals and in public general hospitals, "patient" includes any individual who is admitted for the primary purpose of treatment of mental illness, developmental disability, alcoholism or drug abuse but does not include an individual who receives treatment in a hospital emergency room nor an individual who receives treatment on an outpatient basis at those hospitals, unless the individual is otherwise covered under this subsection. Except as provided in sub. (2), each patient shall:

(a) Upon admission or commitment bc informed orally and in writing of his or her rights under this section. Copies of this section shall be posted conspicuously in each patient area, and shall be available to the patient's guardian and immediate family.

(b) 1. Have the right to refuse to perform labor which is of financial benefit to the facility in which the patient is receiving treatmcnt or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this paragraph. Patients may voluntarily engage in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the department and if:

a. The specific labor is an integrated part of the patient's treatment plan approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;

b. The labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity:

c. The patient has given his or her written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and

d. The labor involved is evaluated for its appropriateness by the staff of the facility at least once every 120 days.

2. Patients may also voluntarily engage in noncompensated therapeutic labor which is of financial benefit to the facility, if the conditions for engaging in compensated labor under this paragraph are met and if:

a. The facility has attempted to provide compensated labor as a first alternative and all resources for providing compensated labor have been exhausted;

b. Uncompensated therapeutic labor docs not cause layoffs of staff hired by the facility *to* otherwise perform such labor; and

c. The patient is not required in any way to perform such labor. Tasks of a personal housekeeping nature are not to be considered compensable labor.

3. Payment to a patient performing labor under this section shall not be applied to costs of treatment without the informed, written consent of such patient. This paragraph does not apply to individuals serving a criminal sentence who are transferred from a state correctional institution under s. 51.37 (5) to a treatment facility.

(cm) Have the rights specified under subd. 1. to send and receive sealed mail, subject to the limitations specified under subd. 2.

1. Patients have an unrestricted right to send sealed mail and receive sealed mail to or from legal counsel, the courts, government officials, private physicians, and licensed psychologists, and have reasonable access to letter writing materials including postage stamps. A patient shall also have a right to send sealed mail and receive sealed mail to or from other persons, subject to physical examination in the patient's presence if there is reason to believe that such communication contains contraband materials or objects that threaten the security of patients, prisoners, or staff. Such reasons shall be written in the individual's treatment record. The officers and staff of a facility may not read any mail covered by this subdivision.

2. The rights of a patient detained or committed under ch. 980 to send and receive sealed mail are subject to the following limitations:

a. An officer or staff member of the facility at which the patient is placed may delay delivery of the mail to the patient for a reasonable period of time to verify whether the person named as the sender actually sent the mail; may open the mail and inspect it for contraband; or may, if the officer or staff member cannot dctermine whether the mail contains contraband, return the mail to the sender along with notice of the facility mail policy.

b. The director of the facility or his or her designee may, in accordance with the standards and the procedure under sub. (2) for denying a right for cause, authorize a member of the facility treatment staff to read the mail, if the director or his or her designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of others.

(d) Except in the case of a person who is committed for alcoholism, have the right to petition the court for review of the commitment order or for withdrawal of the order or release from commihnent as provided in s. 51.20 (16).

(e) Except in the case of a patient who is admitted or transferred under s. 51.35 (3) or 51.37 or under ch. 971 or 975, have the right to the least restrictive conditions necessary to achieve the purposes of admission, commitment or protective placement, under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(f) Have a right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for his or her condition, under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(fm) Have the right to be informed of his or her treatment and care and to participate in the planning of his or her treatment and care.

(g) Have the following rights, under the following procedures, to refuse medication and treatment:

1. Have the right to refuse all medication and treatment except as ordered by the court under subd. 2., or in a situation in which the medication or treatment is necessary to prevent serious physical hann to the patient or to others. Medication and treatment during this period may be refused on religious grounds only as provided in par. (h).

2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, other than for a subject individual who is alleged to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall, upon the motion of any interested person, and may, upon its own motion, hold a hearing to determine whether there is probable cause to believe

that the individual is not competent to refuse medication or treatment and whether the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s. 51.20 (13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s. 51.20(5), except for the right to a jury trial.

3. Following a final commitment order, other than for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

3m. Following a final commitment order for a subject individual who is dctcrmined to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent.

4. For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(h) Have a right to be free from unnecessary or excessive medication at any time. No medication may be administered to a patient except at the written order of a physician. The attending physician is responsible for all medication which is administered to a patient. A record of the medication which is administered to each patient shall be kept in his or her medical records. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program. Except when medication or medical treatment has been ordered by the court under par. (g) or is necessary to prevent serious physical hann to others as evidenced by a recent overt act. attempt or threat to do such harm, a patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment. The individual shall be informed of this right prior to administration of medications or treatment whenever the patient's condition so permits.

(i) 1. Except as provided in subd. 2., have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible. When a patient is placed in isolation or restraint, his or her status shall be reviewed once every 30 minutes. Each facility shall have a written policy covering the use of restraint or isolation that ensures that the dignity of the individual is protected, that the safety of the individual is ensured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. Isolation or restraint may be used for emergency situations only when it is likely that the patient may physically harm himself or herself or others. The treatment director shall specifically designate physicians who are authorized to order isolation or restraint, and shall specifically designate licensed psychologists who are authorized to order isolation. If the treatment director is not a physician, the medical director shall make the designation. In the case of a center for the developmentally disabled, use shall be authorized by the director of the center. The authorization for emergency use of isolation or restraint shall be in writing, except that isolation or restraint may be authorized in emergencies for not more than one hour, after which time an appropriate order in writing shall be obtained from the physician or licensed psychologist designated by the director, in the case of isolation, or the physician so designated in the case of restraint. Emergency isolation or restraint may not be continued for more than 24 hours without a new written order. Isolation may be used as part of a treatment program if it is part of a written treatment plan, and the rights specified in this subsection are provided to the patient. The use of isolation as a part of a treatment plan shall be explained to the patient and to his or her guardian, if any, by the person who provides the treatment. A treatment plan that incorporates isolation shall be evaluated at least once every 2 weeks. Patients who have a recent history of physical aggression may be restrained during transport to or from the facility. Persons who are committed or transferred under s. 51.35 (3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, and who, while under this status, are transferred to a hospital, as defined in s. 50.33 (2), for medical care may be isolated for security reasons within locked facilities in the hospital. Patients who are committed or transferred under s. 51.35 (3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, may be restrained for security reasons during transport to or from the facility.

2. Patients in the maximum security facility at the Mendota Mental Health Institute may be locked in their rooms during the night shift and for a period of no longer than one hour and 30 minutes during each change of shift by staff to permit staff review of patient needs. Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 may be locked in their rooms during the night shift, if they reside in a maximum or medium security unit in which each room is equipped with a toilet and sink, or if they reside in a unit in which each room is not equipped with a toilet and sink and the number of patients outside their rooms equals or exceeds the number of toilets in the unit, except that patients who do not have toilets in their rooms must be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Patients in the maximum security facility at the Mendota Mental Health Institute, or patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065, may also be locked in their rooms on a unit–wide or facility–wide basis as an emergency measure as needed for security purposes to deal with an escape or attempted escape, the discovery of a dangerous weapon in the unit or facility

or the receipt of reliable information that a dangerous weapon is in the unit or facility, or to prevent or control a riot or the taking of a hostage. **A** unit–wide or facility–wide emergency isolation order may only be authorized by the director of the unit or facility where the order is applicable or his or her designee. A unit–wide or facility–wide emergency isolation order affecting the Mendota Mental Health Institute must be approved within one hour after it is authorized by the director of the Mendota Mental Health Institute or the director's designee. An emergency order for unit–wide or facility–wide isolation may only be in effect for the period of time needed to preserve order while dealing with the situation and may not be used as a substitute for adequate staffing. During a period of unit–wide or facility–wide isolation, the status of each patient shall be reviewed every 30 minutes to ensure the safety and comfort of the patient, and each patient who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Each unit in the maximum security facility at the Mendota Mental Health Institute and each unit in a facility specified under s. 980.065 shall have a written policy covering the use of isolation that ensures that the dignity of the individual is protected, that the safety of the individual is secured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. The isolation policies shall be reviewed and approved by the director of the Mendota Mental Health Institute or the director's designee, or by the director of the facility specified under s. 980.065 or his or her designee, whichever is applicable.

(j) Have a right not to be subjected to experimental research without the express and informed consent of the patient and of the patient's guardian after consultation with independent specialists and the patient's legal counsel. Such proposed research shall first be reviewed and approved by the institution's research and human rights committee created under sub. **(4)** and by the department before such consent may be sought. Prior to such approval, the committee and the department shall determine that research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the regulations for research involving human subjects required by the U.S. department of health and human services for projects supported by that agency.

(k) Have a right not to be subjected to treatment procedures such as psychosurgcry, or other drastic treatment procedures without the express and informed consent of the patient after consultation with his or her counsel and legal guardian, if any. Express and informed consent of the patient after consultation with the patient's counsel and legal guardian, if any, is required for the use of electroconvulsive treatment.

(L) Have the right to religious worship within the facility if the patient desires such an opportunity and a member of the clergy of the patient's religious denomination or society is available to the facility. The provisions for such worship shall be available to all patients on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(m) Have a right to a humane psychological and physical environment within the hospital facilities. These facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.

(n) Have the right to confidentiality of all treatment records, have the right to inspect and copy such records, and have the right to challenge the accuracy, completeness, timeliness or relevance of information relating to the individual in such records, as provided in **s.** 51.30.

(o) Except as otherwise provided. have a right not to be filmed or taped, unless the patient signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the patient for a particular purpose or project during a specified time period. The patient may specify in such consent periods during which, or situations in which, the patient may not be filmed or taped. If a patient is legally incompetent, such consent shall be granted on behalf of the patient by the patient's guardian. **A** patient in Goodland Hall at the Mendota Mental Health Institute, or a patient detained or committed under ch. 980 and placed in a facility specified under **s.** 980.065, may be filmed or taped for security purposes without the patient's consent, except that such a patient may not be filmed in patient bedrooms or bathrooms for any purpose without the patient's consent.

(p) Have reasonable access to a telephone to make and receive telephone calls within reasonable limits.

(q) Be permitted to use and wear his or her own clothing and personal articles, or be furnished with an adequate allowance of clothes if none are available. Provision shall be made to launder the patient's clothing.

(r) Be provided access to a reasonable amount of individual secure storage space for his or her own private use.

(s) Have reasonable protection of privacy in such matters as toileting and bathing.

(t) Be permitted to **see** visitors each day.

(u) Have the right to present grievances under the procedures established under sub. (5) on his or her own behalf or that of others to the staff or administrator of the treatment facility or community mental health program without justifiable fear of reprisal and to communicate, subject to par. (p), with public officials or with any other person without justifiable fear of reprisal.

(v) Have the right to use his or her money as he or she chooses, except to the extent that authority over the money is held by another, including the parent of a minor, a court–appointed guardian of the patient's estate or a representative payee. If a treatment facility or community mental health program so approves, a paticnt or his or her guardian may authorize in writing the deposit of money in the patient's name with the facility or program. Any earnings attributable to the money accrue to the patient. The treatment facility or community mental health program shall maintain a separate accounting of the deposited money of each patient. The patient or his or her guardian shall receive, upon written request by the patient or guardian, a written monthly account of any financial transactions made by the treatment facility or community mental health program with respect to the patient's money. If a patient is discharged from a treatment facility or community mental health program, all of the patient's money, including any attributable accrued earnings, shall be returned to the patient. No treatment facility or community mental health program or employee of such a facility or program may act as representative payee for a patient for social security, pension, annuity or trust fund payments or other direct payments or monetary assistance unless the patient or his or her guardian has given informed written consent to do so or unless a representative payee who is acccptablc to the patient or his or her guardian and the payer cannot be identified. A community mental health program or treatment facility shall give money of the patient to him or her upon request, subject to any limitations imposed by guardianship or representative payeeship, except that an inpatient facility may, as a part of its security procedurcs, limit the amount of currency that is held by a patient and may establish reasonable policies governing patient account transactions.

(w) 1. Have the right to be informed in writing, before, upon or at a reasonable time after admission, of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

2. If the patient is a minor, if the patient's parents may be liable for the cost of the patient's care and treatment and if the patient's parents can be located with reasonable effort, the treatment facility or community mental health program shall notify the patient's parents of any liability that the parents may have for the cost of the patient's care and treatment and of their right to receive information under subd. 3., except that a minor patient's parents may not

be notified under this subdivision if the minor patient is receiving care under s. 51.47 without the consent of the minor patient's parent or guardian.

3. A patient, a patient's relative who may be liable for the cost of the patient's care and treatment or a patient's guardian may request information about charges for care and treatment services at the treatment facility or community mental health program. If a treatment facility or community mental health program receives such a request, the treatment facility or community mental health program shall promptly provide to the individual making the request written information about the treahnent facility's or community mental health program's charges for care and treatment services. Unless the request is made by the patient, the guardian of a patient adjudged incompetent under ch. 880, the parent or guardian of a minor who has access to the minor's treatment records under s. 51.30 (5) (b) 1. or a person designated by the patient's informed written consent under s. 51.30 (4) (a) as a person to whom information may be disclosed, information released under this subdivision is limited to general information about the treatment facility's or community mental health program's charges for care and treatment services and may not include information which may not be disclosed under s. 51.30.

(x) Have the right to be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility or community mental health program and by licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

(2) A patient's rights guaranteed under sub. (1) **(p)** to (t) may be denied for cause after review by the director of the facility, and may be denied when medically or therapeutically contraindicated as documented by the patient's physician or licensed psychologist in the patient's treatment record. The individual shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right in an informal hearing before the director of the facility or his or her designee. There shall be documentation of the grounds for withdrawal of rights in the patient's treatment record. After an informal hearing is held, a patient or his or her representative may petition for review of the denial of any right under this subsection through the use of the grievance procedure provided in sub. (5) or, alternatively or in addition to the use of such procedure, may bring an action under sub. (7).

(3) The rights accorded to patients under this section apply to patients receiving services in outpatient and day–service treatment facilities, as well as community mental health programs, insofar as applicable.

(4) (a) Each facility which conducts research upon human subjects shall establish a research and human rights committee consisting of not less than 5 persons with varying backgrounds to assure complete and adequate review of research activities commonly conducted by the facility. The committee shall be sufficiently qualified through the maturity, experience and expertise of its members and diversity of its membership to ensure respect for its advice and counsel for safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific activities, the committee shall be able to ascertain the acceptability of proposals in terms of commitments of the facility and federal regulations, applicable law, standards of professional conduct and practice, and community attitudes.

(b) No member of a committee may be directly involved in the research activity or involved in either the initial or continuing review of an activity in which he or she has a conflicting interest, except to provide information requested by the committee.

(c) No committee may consist entirely of persons who are officers, employees or agents of or are otherwise associated with the facility, apart from their membership on the committee.

(d) No committee may consist entirely of members of a single professional group.

(e) A majority of the membership of the committee constitutes a quorum to do business.

(5) (a) The department shall establish procedures to assure protection of patients' rights guaranteed under this chapter, and shall, except for the grievance procedures of the Mendota and Winnebago mental health institutes and the state centers for the developmentally disabled, implement a grievance procedure which complies with par. (b) to assure that rights of patients under this chapter are protected and enforced by the department, by service providers and by county departments under ss. 51.42 and 51.437. The procedures established by the department under this subsection apply to patients in private hospitals or public general hospitals.

(b) The department shall promulgate rules that establish standards for the grievance procedure used as specified in par. (a) by the department, county departments under ss. 51.42 and 51.437 and service providers. The standards shall include all of the following components:

1. Written policies and procedures regarding the uses and operation of the grievance system.

2. **A** requirement that a person, who is the contact for initiating and processing grievances, be identified within the department and in each county department under ss. 51.42 and 51.437 and be specified by each service provider.

3. An informal process for resolving grievances.

4. **A** formal process for resolving grievances, in cases where the informal process fails to resolve grievances to the patient's satisfaction.

5. A process for notification of all patients of the grievance process.

6. Time limits for responses to emergency and nonemergency grievances, as well as time limits for deciding appeals.

7. A process which patients may use to appeal unfavorable decisions within the department or county department under s. 51.42 or 51.437 or through the service provider.

8. A process which may be used to appeal final decisions under subd. 7. of the department, county department under s. 51.42 or 51.437 or service provider to the department of health and family services.

9. Protections against the application of sanctions against any complainant or any person, including an employee of the department, county department under s. 51.42 or 51.437 or service provider who assists a complainant in filing a grievance.

(c) Each county department of community programs shall attach a statement to an application for recertification of its community mental health programs or treatment facilities that are operated by or under contract with the county. The statement shall indicate if any complaints or allegations of violations of rights established under this section were made during the certification period immediately before the period of recertification that is requested and shall summarize any complaints or allegations made. The statement shall contain the date of the complaint or allegation, the disposition of the matter and the date of disposition. The department shall consider the statement in reviewing the application for recertification.

(d) No person may intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section. Whoever violates this paragraph may be fined not more than $1,000 or imprisoned for not more than 6 months or both.

(6) Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437, and any agency providing services under an agreement with the department or those county departments have the right to use customary and usual treatment techniques and procedures in a rea-

sonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under **s.** 51.61 (1) (g) or the person is a minor 14 years of age or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under **s.** 51.13 (1) (c) or 51.14 (3) (h) or (4) (g). If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required. A refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for admission to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) 1. and a refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for outpatient mental health treatment is reviewable under **s.** 51.14.

(7) (a) Any patient whose rights are protected under this section who suffers damage as the result of the unlawful denial or violation of any of these rights may bring an action against the person, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover any damages as may be proved, together with exemplary damages of not less than $100 for each violation and such costs and reasonable actual attorney fees as may be incurred.

(b) Any patient whose rights are protected under this section may bring an action against any person, including the state or any political subdivision thereof, which willfully, knowingly and unlawfully denies or violates any of his or her rights protected under this section. The patient may recover such damages as may be proved together with exemplary damages of not less than $500 nor more than $1,000 for each violation, together with costs and reasonable actual attorney fees. It is not a prerequisite to an action under this paragraph that the plaintiff suffer or be threatened with actual damages.

(c) Any patient whose rights are protected under this section may bring an action to enjoin the unlawful violation or denial of rights under this section and may in the same action seek damages as provided in this section. The individual may also recover costs and reasonable actual attorney fees if he or she prevails.

(d) Use of the grievance procedure established under sub. (5) is not a prerequisite to bringing an action under this subsection.

(7m) Whoever intentionally deprives a patient of the ability to seek redress for the alleged violation of his or her rights under this section by unreasonably precluding the patient from doing any of the following may be fined not more than $1,000 or imprisoned for not more than 6 months or both:

(a) Using the grievance procedure specified in sub. (5).

(b) Communicating, subject to sub. (1) (p), with a court, government official or staff member of the protection and advocacy agency that is designated under **s.** 51.62 or with legal counsel.

(8) Any informed consent which is required under sub. (1) (a) to (i) may be exercised by the patient's legal guardian if the patient has been adjudicated incompetent and the guardian is so empowered, or by the parent of the patient if the patient is a minor.

(9) The department shall promulgate rules to implement this section.

(10) No person who, in good faith, files a report with the appropriate examining board concerning the violation of rights under this section by persons licensed, certified, registered or permitted under ch. 441, 446, 450, 455 or 456, or who participates in an investigation of an allegation by the appropriate examining board, is liable for civil damages for the filing or participation.

History: 1975 c. 430; 1977 c. 428 ss. 96 to 109, 115; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (5); 1983 a. 293, 357, 538; 1985 a. 176; 1987 a. 366.367.403; 1989 a. 31; 1993 a. 184, 445, 479; 1995 a. 27 s. 9126 (19); 1995 a. 92, 268, 292; 1997 a. 292; 2001 a. 16 ss. 1993j to 1993w, 4034zk, 4054zl; 2001 a. 104.

Cross Reference: See also ch. HFS 94, Wis. adm. code.

A patient in a state facility can recover fees under sub. (7) (c) from the county Matter of Protective Placement of J. S. 144 Wis. 2d 670, 425 N.W.2d 15 (Ct. App. 1988).

The court may order an agency to do planning and the implementation work necessary to fulfill the obligation to order placement conforming to **ss.** 55.06 (9) (a) and 51.61 (1) (e). In Matter of J.G.S. 159 Wis. 2d 685, 465 N.W.2d 227 (Ct. App. 1990).

A nurse's decision to take a mental health patient on a recreational walk is not treatment under sub. (1) (f), and no cause of action was created under this section for injuries incurred when the patient fell. Erbstoeaer v. American Casualty Co. 169 Wis. 2d 637.486 N.W.2d 549 (Ct. App. 1992).

Sub. (1) (g) 4. is not merely illustrative; it establishes the only standard by which a court may determine whether a patient is competent to refuse psychotropic medication. Factors to be considered in deteimining whether this competency standard is met are discussed. Mental Condition of Virgil D. 189 Wis. 2d 1, 524 N.W.2d 894 (1994).

Sub. (1) (k) is unconstitutionally overbroad because it prevents all patients unable to give "express and informed" consent from receiving electroconvulsive treatment under any circumstances, even when the treatment may be life saving. Professional Guardianships, Inc. v. Ruth E.J. 196 Wis. 2d 794, 540 N.W.2d 213 (Ct. App. 1995).

Court commissioners. including probate court commissioners, have the authority to conduct a hearing under s. 51.61 (1) (g). Carol J. R. v. County of Milwaukee. 196 Wis. 2d 882, 540 N.W.2d 233 (Ct. App. 1995).

In an action for negligence and malpractice, when a provider's treatment techniques or deficiencies were part and parcel of the plaintiffs claim, it was appropriate to award costs and attorney fees under sub. (7) (a). Wright v. Mercy Hospital. 206 Wis. 2d 448, 557 N.W.2d 846 (Ct. App. 1996).

Sub. (7) contemplates two separate and distinct causes of action. Par. (a) applies when the denial of a patient's rights have caused actual damages. Par. (b) does not require damages. but allows recovery if the patient's rights were violated willfully, knowingly, and unlawfully. Schaidler v. Mercy Medical Center of Oshkosh. Inc. 209 Wis. 2d 457, 563 N.W.2d 554 (Ct. App. 1997).

This section and ch. 980 provide the statutory basis for a court to issue an involuntary medication order for individuals who suffer from a chronic mental illness and arc committed under ch. 980. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435.

Involuntarily committed persons are entitled to more considerate treatment and conditions of confinement than criminals, hut their rights are not absolute. A restriction of rights must be reasonably related to legitimate therapeutic and institutional interests. West v. Macht, 2000 WI App 134, 237 Wis. 2d 265, 614 N.W.2d 34.

Nonconsensual drug therapy did not violate due process. Stensvad v. Reivitz, 601 F. Supp. 128 (1985).

Sub. (1) (e) and (i) do not restrict the discretion of institution administrators to restrain patients during transport. Thielman v. Leean, 140 F. Supp. 2d 982 (2001). Affirmed. 282 F. 3d 478 (2002).

51.62 Protection and advocacy system. (1) DEFINITIONS. In this section:

(ag) "Abuse" means any of the following:

1. An act, omission or course of conduct by another that is inflicted intentionally or recklessly on an individual with developmental disability or mental illness and that does at least one of the following:

a. Results in bodily harm or great bodily harm to the individual.

b. Intimidates, humiliates, threatens, frightens or otherwise harasses the individual.

2. The forcible administration of medication to an individual with developmental disability or mental illness, with the knowledge that no lawful authority exists for the forcible administration.

3. An act to an individual with developmental disability or mental illness that constitutes first degree, 2nd degree, 3rd degree or 4th degree sexual assault as specified under **s.** 940.225.

(am) "Developmental disability" means a severe, chronic disability of a person that is characterized by all of the following:

1. Is attributable to a mental or physical impairment or a combination of a mental and a physical impairment.

2. Is manifested before the person has attained the age of 22.

3. Is likely to continue indefinitely

4. Results in substantial functional limitation in at least 3 of the following areas of major life activity:

a. Self-care.

b. Receptive and expressive language.

c. Learning.

d. Mobility.

e. Self–direction.

f. Capacity for independent living.

g. Economic self–sufficiency.

5. Requires a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) "Inpatient health care facility" has the meaning provided under s. 50.135 (1), except that it does include community–based residential facilities' as defined under s. 50.01 (1g).

(bm) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her welfare, or the welfare of others, or of the community and is an inpatient or resident in a facility rendering care or treatment or has been discharged from the facility for not more than 90 days.

(br) "Neglect" means an act, omission or course of conduct that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or mental health of an individual with developmental disability or mental illness.

(c) "Protcction and advocacy agency" means an entity designated by the governor to implement a system to protect and advocate the rights of persons with developmental disabilities, as authorized under 42 USC 6012 or mental illness, as authorized under 42 USC 10801 to 10851.

(2) DESIGNATION. (a) The governor shall designate as the protection and advocacy agency a private, nonprofit corporation that is independent of all of the following:

1. **A** state agency.

2. The council on developmental disabilities and the council on mental health.

3. An agency that provides treatment, services or habilitation to persons with developmental disabilities or mental illness.

(b) After the governor has designated a protection and advocacy agency under par. (a), the protection and advocacy agency so designated shall continue in that capacity unless and until the governor redesignates the protection and advocacy agency to another private, nonprofit corporation that meets the requirements of par. (a). The governor may redesignate this private, nonprofit corporation the protection and advocacy agency only if all of the following conditions are met:

1. Good cause exists for the redesignation.

2. Prior notice and an opportunity to comment on a proposed redesignation has been given to all of the following:

a. The council on developmental disabilities and the council on mental health.

b. Major organizations, in the state, of persons with developmental disabilities or mental illness and families and representatives of these persons.

(c) If the governor has designated a protection and advocacy agency before July 20, 1985, that entity shall continue in that capacity unless and until the governor redesignates the protection and advocacy agency to another private, nonprofit corporation that meets the requirements of par. (a).

(3) AGENCY POWERS AND DCTIES. (a) The protection and advocacy agency may:

1. Pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities or mental illness and to provide information on and referral to programs and services addressing the needs of persons with developmental disabilities or mental illness.

2. Have access to records as specified under ss. 51.30 (4) (b) 18. and 146.82 (2) (a) 9.

2m. Have immediate access to any person with mental illness or developmental disability, regardless of age, who has requested services or on whose behalf services have been requested from the protection and advocacy agency or concerning whom the protection and advocacy agency has reasonable cause to believe that abuse, neglect or a violation of rights has occurred.

3. Contract with a private, nonprofit corporation to confer to that corporation the powers and duties specified for the protection and advocacy agency under this subsection, except that the corporation may have access to records as specified under ss. 51.30 (4) (b) 18. and 146.82 (2) (a) 9. only if all of the following conditions are met:

a. The contract of the corporation with the protection and advocacy agency so provides.

b. The department has approved the access.

(b) The protection and advocacy agency shall pay reasonable costs related to the reproducing or copying of patient health care or treatment records.

(3m) FUNDING. From the appropriation under s. 20.435 (7) (md), the department may not distribute more than $75,000 in each fiscal year to the protection and advocacy agency for performance of community mental health protection and advocacy services.

(4) DEPARTMENTAL DUTIES. The department shall provide the protection and advocacy agency with copies of annual surveys and plans of correction for intermediate care facilities for the mentally retarded on or before the first day of the 2nd month commencing after completion of the survey or plan.

History: 1985 a. 29; 1987 a. 161 s. 13m; 1987 a. 399; 1989 a. 31; 1993 a. 27; 1995 a. 27, 169; 1997 a. 27, 35.

The Wisconsin **statutory** scheme does not give an agency express authority to investigate incidents of abuse and neglect or to obtain patient records, but under federal law any state system established to protect the rights of persons with developmental disabilities has that authority. Wisconsin Coalition for Advocacy v. Czaplewski, 131 F. Supp. 2d 1039 (2001).

51.63 Private pay for patients. Any person may pay, in whole or in part, for the maintenance and clothing of any mentally ill, developmentally disabled, alcoholic or drug dependent person at any institution for the treatment of persons so afflicted, and his or her account shall be credited with the sums paid. The person may also be likewise provided with such special care in addition to those services usually provided by the institution as is agreed upon with the director, upon payment of the charges therefor.

History: 1975 c. 430.

51.64 Reports of death required; penalty; assessment. (1) In this section:

(a) "Physical restraint" includes all of the following:

1. **A** locked room.

2. **A** device or garment that interferes with an individual's freedom of movement and that the individual is unable to remove easily.

3. Restraint by a treatment facility staff member of a person admitted or committed to the treatment facility?by use of physical force.

(b) "Psychotropic medication" means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

(2) (a) No later than 24 hours after the death of a person admitted or committed to a treatment facility, the treatment facility shall report the death to the department if one of the following applies:

1. Thcre is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication.

3. Thcre is reasonable cause to believe that the death was a suicide.

History: 1989 a. 336.

51.65 Segregation of tuberculosis patients. The department shall make provision for the segregation of tuberculosis patients in the state–operated and community–operated facilities, and for that purpose may set apart facilities and equip facilities for the care and treatment of such patients.

History: 1975 *c.* 430.

51.67 Alternate procedure; protective services. If, after hearing under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not warranted and that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days. If the court orders tcniporary protective placement for an individual under the age of 22 years in a center for the developmentally disabled, this placement may be made only at the central center for the developmentally disabled unless the department authorizes the placement or transfer to the northern or southern center for the developmentally disabled. Any interested party may then file a petition for permanent guardianship or protective placement or services, including medication, under ch. 55. If the individual is in a treatment facility, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available. The court may order psychotropic medication as a temporary protective service under this section if it finds that there is probable cause to believe the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of chronic mental illness, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, one of the following is true:

(1) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

(2) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

History: 1975 *c.* 430: 1977 *c.* 187.428; 1979 c. 89,336: 1985 a. 29; 1987 a. ***366:*** 1995 a. 268.

51.75 Interstate compact on mental health. The interstate compact on mental health is enacted into law and entered into by this state with all other states legally joining therein substantially in the following form:

THE INTERSTATE COMPACT ON
MENTAL HEALTH.

The contracting states solemnly agree that:

(I) ARTICLE I. The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of paticnt welfare and to establish the responsibilities of the party states in terms of such welfare.

(2) ARTICLE II. As used in this compact:

(a) "Aftercare" means care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(b) "Institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(c) "Mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself or herself and his or her affairs, but shall not include mental illness as defined herein.

(d) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for the person's welfare, or the welfare of others, or of the community.

(e) "Patient" means any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to the provisions of this compact.

(f) "Receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(g) "Sending state'' means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(h) "State" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) ARTICLE III. (a) Whenever a person physically present in any party state is in need of institutionalization by reason of mental illness or mental deficiency, the person shall be eligible for care and treatment in an institution in that state irrespective of the person's residence, settlement or citizenship, qualifications.

(b) The provisions of par. (a) to the contrary notwithstanding any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion thereof. The factors referred to in this paragraph include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as are considered appropriate.

(c) No state is obliged to receive any patient under par. (b) unless the sending state has given advance notice of its intention to send the patient, furnished all available medical and other pertinent records concerning the patient and given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to cxaniine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(d) If the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that the interstate paticnt would be taken if the interstate paticnt were a local patient.

(e) Pursuant to this compact, the deterniination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

(4) ARTICLE IV. (a) Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all rea-

sonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient and such other documents as are pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating or caring for a patient on aftercare pursuant to the terms of this subsection, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

(5) ARTICLE V. Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape, in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, the patient shall be detained in the state where found, pending disposition in accordance with law.

(6) ARTICLE VI. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any state party to this compact, without interference.

(7) ARTICLE VII. (a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any *2* or more **party** states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state. or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person in regard to costs for which such **party** state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

(8) ARTICLE VIII. (a) Nothing in this compact shall be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any patient's guardian on the guardian's own behalf or in respect of any patient for whom the guardian may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court by law requires, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed by it or continue the guardian's power and responsibility, whichever it deems advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in par. (a) includes any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

(9) ARTICLE IX. (a) No provision of this compact except sub. (5) applies to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it is the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

(10) ARTICLE X. (a) Each party state shall appoint a "compact administrator" who, on behalf of that state, shall act as general coordinator of activities under the compact in that state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by that state either in the capacity of sending or receiving state. The compact administrator or the duly designated representative of the compact administrator shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

(11) ARTICLE XI. The duly constituted administrative authorities of any 2 or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

(12) ARTICLE XII. This compact enters into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with all states legally joining therein.

(13) ARTICLE XIII. (a) A state **party** to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal takes effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by sub. (7) (b) as to costs or from any supplementary agreement made pursuant to sub. (11) shall be in accordance with the terms of such agreement.

(14) ARTICLE XIV. This compact shall be liberally construed so as to effectuate the purpose thereof. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state, or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability

thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact is held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1981 c. 390: 1983 a. 189; 1991 a. 316.

51.76 Compact administrator. Pursuant to the interstate compact on mental health, the secretary shall be the compact administrator and, acting jointly with like officers of other party states, may promulgate rules to carry out more effectively the terms of the compact. The compact administrator shall cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement entered into by this state thereunder.

51.77 Transfer of patients. (1) In this section "relatives" means the patient's spouse, parents, grandparents, adult children, adult siblings, adult aunts, adult uncles and adult cousins, and any other relative with whom the patient has resided in the previous 10 years.

(2) Transfer of patients out of Wisconsin to another state under the interstate compact on mental health shall be upon recommendation of no less than 3 physicians licensed under ch. 448 appointed by the court of competent jurisdiction and shall be only in accord with the following requirements:

(a) That the transfer be requested by the patient's relatives or guardian or a person with whom the patient has resided for a substantial period on other than a commercial basis. This requirement does not preclude the compact administrator or the institution in which the patient is in residence from suggesting that relatives or the guardian request such transfer.

(b) That the compact administrator determine that the transfer of the patient is in the patient's best interest.

(c) That the patient have either interested relatives in the receiving state or a determinable interest in the receiving state.

(d) That the patient, guardian and relatives, as determined by the patient's records, whose addresses are known or can with reasonable diligence be ascertained, be notified.

(e) That none of the persons given notice under par. (d) object to the transfer of said patient within 30 days of receipt of such notice.

(f) That records of the intended transfer, including proof of service of notice under par. (d) be reviewed by the court assigned to exercise probate jurisdiction for the county in which the patient is confined or by any other court which a relative or guardian requests to do so.

(3) If the request for transfer of a patient is rejected for any of the reasons enumerated under sub. (2), the compact administrator shall notify all persons making the request as to why the request was rejected and of the patient's right to appeal the decision to a competent court.

(4) If the patient, guardian or any relative feels that the objections of other relatives or of the compact administrator raised under sub. (2) are not well–founded in preventing transfer, such person may appeal the decision not to transfer to a competent court having jurisdiction which shall determine, on the basis of evidence by the interested parties and psychiatrists, psychologists and social workers who are acquainted with the case, whether transfer is in the best interests of the patient. The requirements of sub. (2) (c) shall apply to this subsection.

(5) The determination of mental illness or developmental disability in proceedings in this state requires a finding of a court in accordance with the procedure contained in s. 51.20.

History: 1975 c. 430; 1977 c. 449; 1991 a. 316.

51.78 Supplementary agreements. The compact administrator may enter into supplementary agreements with appropriate officials of other states under s. 51.75 (7) and (11). If such supplementary agreements require or contemplate the use of any institution or facility of this state or county or require or contemplate the provision of any service by this state or county, no such agreement shall take effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: 1981 c. 390.

51.79 Transmittal of copies. Duly authorized copies of ss. 51.75 to 51.SO shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States and the council of state governments.

History: 1979 c. 89.

51.80 Patients' rights. Nothing in the interstate compact on mental health shall be construed to abridge, diminish or in any way impair the rights or liberties of any patient affected by the compact.

51.81 Uniform extradition of persons of unsound mind act; definitions. The terms "flight" and "fled" as used in ss. 51.81 to 51.85 shall be construed to mean any voluntary or involuntary departure from the jurisdiction of the court where the proccedings hereinafter mentioned may have been instituted and are still pending with the effect of avoiding, impeding or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if the person then was under detention by law as a person of unsound mind and subject to detention. The word "state" wherever used in ss. 51.81 to 51.55 shall include states, territories, districts and insular and other possessions of the United States. As applied to a request to return any person within the purview of ss. 51.81 to 51.85 to or from the District of Columbia, the words, "executive authority," "governor" and "chief magistrate," respectively, shall include a justice of the supreme court of the District of Columbia and other authority.

History: 1971 c. 40 s. 93; 1991 a. 316.

51.82 Delivery of certain nonresidents. A person alleged to be of unsound mind found in this state, who has fled from another state, in which at the time of the flight: (a) The person was under detention by law in a hospital, asylum or other institution for the insane as a person of unsound mind; or (b) the pcrson had been theretofore determined by legal proceedings to bc of unsound mind, the finding being unreversed and in full force and effect, and the control of his or her person having been acquired by a court of competent jurisdiction of the state from which the person fled; or (c) the person was subject to detention in that state, being then the person's legal domicile (personal service of process having been made) based on legal proceedings pending there to have the person declared of unsound mind, shall on demand of the executive authority of the state from which the person fled, be delivered for removal thereto.

History: 1975 c. 430: 1991 a. 316.

51.83 Authentication of demand; discharge; costs. (1) Whenever the executive authority of any state demands of the executive authority of this state, any fugitive within the purview of s. 51.82 and produces a copy of the commitment, decree or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled with an affidavit made before a proper officer showing the pcrson to be such a fugitive, it is the duty of the executive authority of this state to cause the fugitive to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to the agent when the agent appears.

(2) If no such agent appears within 30 days from the time of the apprehension, the fugitive may be discharged. **All** costs and expenses incurred in the apprehending, securing, maintaining and transmitting such fugitive to the state making such demand, shall be paid by such state. Any agent so appointed who receives custody of the fugitive shall be empowered to transmit the fugitive to the state from which the fugitive has fled. The executive authority of this state is hereby vested with the power, on the application of any person interested, to demand the return to this state of any fugitive within the purview of ss. 51.81 to 51.85.

History: 1971 c. 40 s. 93; 1991 a. 316.

51.84 Limitation of time to commence proceeding. Any proceedings under **ss.** 51.81 to 51.85 shall be begun within one year after the flight referred to in **ss.** 51.81 to 51.85.

History: 1971 c. 40 s. 93; 1981 c. 314 s. 146.

The limitation period commences on the date the committing state discovers the patient in the asylum state. State **ex** rel. Melentowich v. Klink, 108 Wis. 2d 374,321 N.W.2d 272 (1982).

51.85 Interpretation. Sections 51.81 to 51.85 shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1971 c. 40 s. 93.

51.87 Interstate contracts for services under this chapter. (1) PURPOSE AND POLICY. The purpose of this section is to enable appropriate treatment to be provided to individuals, across state lines from the individuals' state of residcnce, in qualified facilities that are closer to the homes of the individuals than are facilities available in their home states.

(2) DEFINITIONS. In this section:

(a) "Receiving agency" means a public or private agency or county department which, under this section, provides trcatment to individuals from a state other than the state in which the agency or county department is located.

(b) "Receiving state" means the state in which a receiving agency is located.

(c) "Sending agency" means a public or private agency located in a statc which sends an individual to another state for trcatment under this section.

(d) "Sending state" means the state in which a sending agency is located.

(3) PURCHASE OF SERVICES. **A** county department under s. 46.23, 51.42 or 51.437 may contract as provided under this section with public or private agencies in states bordering on Wisconsin to secure services under this chapter for persons who receive services through the county department, except that services may not be secured for persons committed under s. 971.14 or 971.17. Section 46.036 (1) to (6) applies to contracts entered into under this section by county departments under s. 46.23, 51.42 or 51.437.

(4) PROVISION OF SERVICES. A county department under s. 46.23, 51.42 or 51.437 may contract as provided under this section with public or private agencies in a state bordering on Wisconsin to provide services under this chapter for residents of the bordering state in approved treatment facilities in this state, except that services may not be provided for residents of the bordering state who are involved in criminal procccdings.

(5) CONTRACT APPROVAL. **A** contract under this section may not be validly executed until the department has reviewed and approved the provisions of the contract, determined that the recciving agency provides services in accordance with the standards of this state and the secretary has certified that the receiving state's laws governing patient rights are substantially similar to those of this state.

(6) RESIDENCE NOT ESTABLISHED. No person establishes legal residcnce in the statc where the receiving agency is located while the person is receiving services pursuant to a contract under this section.

(7) TREATMENT RECORDS. Section 51.30 applies to treatment records of an individual receiving services pursuant to a contract under this section through a receiving agency in this state, except that the sending agency has the same right of access to the treatment records of the individual as provided under **s.** 51.30 for a county department under **s.** 51.42 or 51.437.

(8) INVOLUNTARY COMMITMENTS. An individual who is detained, committed or placed on an involuntary basis under s. 51.15, 51.20 or 51.45 or ch. 55 may be confined and treated in another state pursuant to a contract under this section. An individual who is detained, committed or placed under the civil law of a state bordering on Wisconsin may be confined and treated in this state pursuant to a contract under this section. Court orders valid under the law of the sending state are granted recognition and reciprocity in the receiving state for individuals covered by a contract under this section to the extent that the court orders relate to confinement for treatment or care of a mental disability. Such court orders are not subject to legal challenge in the courts of the receiving state. Persons who are detained, committed or placed under the law of a sending state and who are transferred to a receiving state under this section continue to be in the legal custody of the authority responsible for them under the law of the sending state. Except in emergencies, those persons may not be transferred, removed or furloughed from a facility of the receiving agency without the specific approval of the authority responsible for them under the law of the sending state.

(9) APPLICABLE LAWS. While in the receiving state pursuant to a contract under this section, an individual shall be subject to all of the provisions of law and regulations applicable to persons detained, committed or placed pursuant to the corresponding laws of the receiving state, except those laws and regulations of the receiving state relating to length of confinement, reexaminations and extensions of confinement and except as otherwise provided by this section. The laws and regulations of the sending state relating to length of confinement, reexaminations and extensions of confinement shall apply. No person may be sent to another state pursuant to a contract under this section until the receiving state has enacted a law recognizing the validity and applicability of this state's laws as provided in this section.

(10) VOLUNTARY PLACEMENTS. If an individual receiving treatment on a voluntary basis pursuant to a contract under this section requests discharge, the receiving agency shall immediately notify the sending agency and shall return the individual to the sending state as directed by the sending agency within 48 hours after the request, excluding Saturdays, Sundays and legal holidays. The sending agency shall immediately upon return of the individual either arrange for the discharge of the individual or detain the individual pursuant to the emergency detention laws of the sending state.

(11) ESCAPED INDIVIDUALS. If an individual receiving services pursuant to a contract under this section escapes from the receiving agency and the individual at the time of the escape is subject to involuntary confinement under the law of the sending state, the receiving agency shall use all reasonable means to recapture the escapee. The receiving agency shall immediately report the escape to the sending agency. The recciving state has the primary responsibility for, and the authority to direct, the pursuit, retaking and prosecution of escaped persons within its borders and is liable for the cost of such action to the extent that it would be liable for costs if its own resident escaped.

(12) TRANSFERS BETWEEN FACILITIES. An individual may be transferred between facilities of the receiving state if transfers are permitted by the contract under this section providing for the individual's care.

(13) REQUIRED CONTRACT PROVISIONS. **All** contracts under this section shall do all of the following:

(a) Establish the responsibility for the costs of all services to bc provided under the contract.

(b) Establish the responsibility for the transportation of clients to and from recciving facilities.

(c) Provide for reports by the receiving agency to the sending agency on the condition of each client covered by the contract.

(d) Provide for arbitration of disputes arising out of the provisions of the contract which cannot be settled through discussion between the contracting parties and specify how arbitrators will be chosen.

(e) Include provisions ensuring the nondiscriminatory treatment, as required by law, of employees, clients and applicants for employment and services.

(f) Establish the responsibility for providing legal representation for clients in legal proceedings involving the legality of confinement and the conditions of confinement.

(g) Establish the responsibility for providing legal representation for employees of the contracting parties in legal proceedings initiated by persons receiving treatment pursuant to the contract.

(h) Include provisions concerning the length of the contract and the means by which the contract can be terminated.

(i) Establish the right of qualified employees and representatives of the sending agency and sending state to inspect, at all reasonable times, the records of the receiving agency and its treatment facilities to determine if appropriate standards of care are met for clients receiving services under the contract.

(j) Require the sending agency to provide the receiving agency with copies of all relevant legal documents authorizing confinement of persons who are confined pursuant to law of the sending state and receiving services pursuant to a contract under this section.

(k) Require individuals who are seeking treatment on a voluntary basis to agree in writing to be returned to the sending state upon making a request for discharge as provided in sub. (10) and require an agent or employee of the sending agency to certify that the individual understands that agreement.

(L) Establish the responsibility for securing a reexamination for an individual and for extending an individual's period of confinement.

(m) Include provisions specifying when a receiving facility can refuse to admit or retain an individual.

(n) Specify the circumstances under which individuals will be permitted home visits and granted passes to leave the facility.

History: 1983 a. 365; 1985 a. 176,332.

51.90 Antidiscrimination. No employee, prospective employee, patient or resident of an approved treatment facility, or consumer of services provided under this chapter may be discriminated against because of age, race, creed, color, sex or handicap.

History: 1975 c. 430.

51.91 Supplemental aid. (1) DECLARATION OF POLICY. The legislature recognizes that mental health is a matter of statewide and county concern and that the protection and improvement of health are governmental functions. It is the intent of the legislature, therefore, to encourage and assist counties in the construction of community mental health facilities, and public medical institutions as defined by rule of the department.

(2) ELIGIBILITY. (a) Any county which qualifies for additional state aid under s. 51.26, 1971 stats., and has obtained approval for the construction of mental health facilities pursuant to s. 46.17 may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities approved pursuant to s. 46.17.

(b) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of public medical institutions as defined by rule of the department.

(c) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities as defined by rule of the department.

(d) No county may claim aid under this section on any single obligation for more than 20 years.

(e) Termination of eligibility for aid under s. 51.26, 1971 stats., shall terminate eligibility for aid for the construction of mental health facilities, and failure to meet the requirements established for public medical institutions by rule of the department shall terminate eligibility for aid for the construction of public medical institutions. Failure to meet the requirements for mental health facilities established by rule of the department shall terminate eligibility for aid for the construction of mental health facilities.

(f) Mental health facilities shall include services required for the prevention, diagnosis, treatment and rehabilitation of the mentally ill, as established by rule of the department.

(3) LIMITATION OF AID. (a) Aid under this section shall be paid only on interest accruing after January 1, 1967, or after the date construction begins, whichever is later.

(b) Until June 30, 1970, such aid shall be at the rate of 60% of the interest obligations eligible under this section or that amount of such obligation as is equal to the percentage rate of participation of the state set forth in s. 49.52 (2), 1971 stats., whichever is higher. The contribution of the state for such interest accruing in each fiscal year shall be controlled by the percentage rate of participation under s. 49.52 (2), 1971 stats., on January 1 of that fiscal year. Beginning July 1, 1970, such aid shall be at the rate of 100%.

(c) This section applies only to construction projects approved for state interest aid by the department of health and family services prior to June 30, 1973.

(4) APPLICATION FOR AID. Application for aid under this section shall be filed with the department as prescribed by it. Such application shall include evidence of the existence of the indebtedness on which the county is obligated to pay interest. The department may by audit or investigation satisfy itself as to the amount and validity of the claim and, if satisfied, shall grant the aid provided by this section. Payment of aid shall be made to the county treasurer.

History: 1971 c. 125, 164,211,215; 1975 c. 430 s. 23; Stats. 1975 s. 51.91; 1993 a. 213; 1995 a. 27 s. 9126 (19).

51.95 Short title. This chapter shall be known as the "State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act".

History: 1975 c. 430 s. 59; Stats. 1975 s. 51.95; 1955 a. 264.

CHAPTER 55
PROTECTIVE SERVICE SYSTEM

Cross−reference: See s. 46.011 for definitions applicable to chs. 46, 48, 50, 51, 55 and 58.

55.001 Declaration of policy. The legislature recognizes that many citizens of the state, because of the infirmities of aging, chronic mental illness, mental retardation, other developmental disabilities or like incapacities incurred at any age, are in need of protective services. These services should, to the maximum degree of feasibility under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect.

History: 1973 c. 284; 1979 c. 221; 1995 a. 92.

Neither a district attorney nor a corporation counsel has a duty to petition for protective placement, determination of incompetency, or otherwise intervene when an apparently competent elderly person with a life threatening illness chooses to remain at home under a doctor's and family care rather than seeking a higher level of care that might extend her life. 74 Atty. Gen. 188.

55.01 Definitions. In this chapter: **(1)** "Abuse" means any of the following:

(a) ***An*** act, omission or course of conduct by another that is inflicted intentionally or recklessly and that does at least one of the following:

1. Results in bodily harm or great bodily harm to a vulnerable adult.

2. Intimidates, humiliates, threatens, frightens or otherwise harasses a vulnerable adult.

(b) The forcible administration of medication to a vulnerable adult, with the knowledge that no lawful authority exists for the forcible administration.

(c) ***An*** act that constitutes first degree, second degree, third degree or fourth degree sexual assault as specified under **s.** 940.225.

(1g) "Agency" means a county department or any public or private board, corporation or association which is concerned with the specific needs and problems of developmentally disabled, mentally ill, alcoholic, drug dependent or aging persons.

(1m) "Bodily harm" has the meaning given in s. 939.22 (4).

(1p) "Caretaker" means the person, if any, who takes care of a vulnerable adult voluntarily or under a contract for care.

(1r) "County department", except as otherwise provided, means a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 designated under **s.** 55.02.

(1t) "County protective services agency" means the county department designated in s. 55.02.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody, and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

(2r) "False representation" includes a promise that is made with the intent not to fulfill the promise.

(2t) "Great bodily harm" has the meaning given in s. 939.22 (14).

(3) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her care or custody.

(4) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the person's welfare.

(4m) "Mental illness" means mental disease to the extent that an afflicted person requires care, treatment or custody for his or her own welfare or the welfare of others or of the community.

(4p) "Misappropriation of property" means any of the following:

(a) The intentional taking, carrying away, use, transfer, concealment or retention of possession of the property of a vulnerable adult without the vulnerable adult's informed consent and with intent to deprive the vulnerable adult of possession of the property.

(b) Obtaining the property of a vulnerable adult by intentionally deceiving the vulnerable adult with a representation that is known to be a false representation, is made with intent to defraud and does defraud the vulnerable adult.

(4r) "Neglect" means an act, omission or course of conduct that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or mental health of a vulnerable adult.

(5) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from adequately providing for his or her care or custody.

(7) "Vulnerable adult" has the meaning given in s. 940.285 (1) (e).

History: 1973 c. 284; 1975 c. 393,430; 1979 c. 221; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1991 a. 316; 1993 a. 445.

Cross−reference: See **s.** 46.011 for definitions applicable to chs. 46 to 51, 55 and 58.

55.02 Protective service system; establishment. The department shall develop a statewide system of protective service for mentally retarded and other developmentally disabled persons, for aged infirm persons, for chronically mentally ill persons, and for persons with other like incapacities incurred at any age in accordance with rules promulgated by the department. The protective service system shall be designed to encourage independent living and to avoid protective placement whenever possible. The system shall use the planning and advice of agencies, including the county department under **s.** 46.215, 46.22, 46.23, 51.42, or 51.437. The chairperson of each county board of supervisors shall designate a county department under **s.** 46.215, 46.22, 51.42, or 51.437 that is providing services in his or her county or a joint mechanism of these county departments to have the responsibility for local planning for the protective service system. The chairperson of the Milwaukee County board of supervisors shall designate the county department under **s.** 46.215 to serve as the county protective services agency for purposes of s. 55.043. The department and these county departments shall cooperate in developing a coordinated system of services. The department shall provide direct services and enter into contracts with any responsible public or private agency for provision of protective services. In each county, the county department designated under this section shall determine the reporting requirements applicable to the county under **s.** 880.38 (3).

History: 1973 **c.** 284; 1975 *c.* 393; 1979 c. 221; 1981 *c.* 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1985 a. 332 s. 251 (3); 1993 a. 445; 2001 a. 103.

55.03 Status of guardian. No agency acting as a guardian appointed under ch. 880 shall be a provider of protective services or placement for its ward under this chapter. Nothing in this chapter shall be construed to prohibit the transfer of guardianship and legal custody under **s.** 48.427 or 48.43.

History: 1973 **c.** 284; 1979 *c.* 330.

55.04 Program responsibilities. (1) The department shall have all of the following responsibilities in the administration of this chapter:

(a) ***Protective services.***

1. Outreach.
2. Identification of persons in need of services.
3. Counseling and referral for services.
4. Coordination of services for individuals.
5. Tracking and follow–up.
6. Provision of social services.
7. Case management.
8. Legal counseling or referral.
9. Guardianship referral.
10. Diagnostic evaluation.
11. Any other responsibilities that the department considers appropriate.

(b) ***Protective placement.*** Evaluation, monitoring and provision of protective placements.

(2) All agencies providing protective services shall make such reports as the department may require.

(3) If service is obtained by order of a court, the provider of service shall make reports under sub. (2) as the court may direct.

(4) Where any responsibility or authority is created under this chapter upon or in relation to a guardian, such responsibility or authority is deemed to apply to a parent or person in the place of a parent in the case of a minor who is or who is alleged to be developmentally disabled.

History: 1973 **c.** 284; 1975 c. 430; 1979 c. 110 s. *60* (1); 2001 a. 103.

55.043 County protective services agency. (1) INVESTIGATION; POWERS. (a) If a county protective services agency has probable cause to believe that there is misappropriation of property or neglect or abuse of a vulnerable adult, the county protective services agency may conduct an investigation in Milwaukee County to determine if the vulnerable adult in question is in need of protective services. The county protective services agency shall conduct the investigation in accordance with standards established by the department for conducting the investigations. The investigation shall include at least one of the following:

1. Observation of or an interview with the vulnerable adult, in private to the extent practicable, and with or without consent of his or her guardian, if any.
2. A visit to the residence of the vulnerable adult.
3. An interview with the guardian, if any, and with the caretaker, if any, of the vulnerable adult.
4. A review of the treatment and patient health care records of the vulnerable adult.
5. **A** review of those financial records, if any, of the vulnerable adult that are maintained by the caretaker or landlord of the vulnerable adult or by a member of the immediate family of the vulnerable adult, the caretaker or the landlord.

(b) The county protective services agency may transport the vulnerable adult for performance of a medical examination by a physician if any of the following applies:

1. The vulnerable adult or his or her guardian, if any, consents to the examination.
2. The vulnerable adult is incapable of consenting to the examination and one of the following applies:

a. The vulnerable adult has no guardian.

b. The vulnerable adult's guardian refuses to consent to the examination, but the examination is authorized by order of a court.

(2) LOCAL ENFORCEMENT ASSISTANCE. The county protective services agency may request a sheriff or police officer to accompany the investigator during visits to the residence of the vulnerable adult or request other assistance as needed. If the request is made, a sheriff or police officer shall accompany the investigator of the county protective services agency to the residence of the vulnerable adult and shall provide other assistance as requested or necessary.

(3) RESTRAINING ORDER; INJUNCTION. If a person other than the vulnerable adult interferes with the investigation under sub. (1) or interferes with the delivery of protective services to the vulnerable adult, the county protective services agency may obtain a restraining order or injunction under **s.** 813.123 against the person.

(4) OFFER OF SERVICES. If upon investigation the county protective services agency finds misappropriation of property or neglect or abuse of a vulnerable adult, the county protective services agency may do one or more of the following:

(a) Offer services, including protective services under s. 55.05, a protective placement under **s.** 55.06, relocation assistance or other services.

(b) Take appropriate emergency action, including emergency protective placement under **s.** 55.06, if the county protective services agency considers that the emergency action is in the vulnerable adult's best interests and the emergency action is the least restrictive appropriate intervention.

(c) Refer the case to local law enforcement officials under sub. (2) for further investigation or to the district attorney, if the county protective services agency has reason to believe that a violation of chs. 939 to 951 has occurred.

(d) Refer the case to the licensing or certification authorities of the department or to other regulatory bodies if the residence, facility or program for the vulnerable adult is or should be licensed or certified or is otherwise regulated.

(e) Refer the case to the department of regulation and licensing if the misappropriation of property or neglect or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 460.

NOTE: Par. (e) is shown as amended eff. 3–1–03 by 2001 Wis. Act 74. Prior to 3–1–03 it reads:

(e) Refer the case to the department of regulation and licensing if the misappropriation of property or neglect or abuse involves an individual who is required to hold a credential, as defined in s. 440.01 (2) (a), under chs. 440 to 459.

(f) Bring a petition for a guardianship and protective service or protective placement if necessary to prevent misappropriation of property or neglect or abuse and if the vulnerable adult would otherwise be at risk of serious harm because of an inability to arrange for necessary food, clothing, shelter and services.

(5) APPLICABILITY. This section does not apply to patients or residents of state–operated or county-operated inpatient institutions or hospitals issued certificates of approval under s. 50.35 unless the alleged misappropriation of property or neglect or abuse of such a patient or resident is alleged to have been done by a person other than an employee of the inpatient institution or hospital.

History: 1993 **a.** 445; 1997 **a.** 27; 2001 **a.** 74, 103.

55.045 Funding. The appropriate county department designated under **s.** 55.02 shall, within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, provide for the reasonable program needs of persons who are protectively placed or who receive protective services under this chapter, including reasonable expenses for the evaluations required by s. 55.06 (8). Payment and collections for protective placement or protective services provided in public facilities specified in s. 46.10 shall be governed in accordance with **s.** 46.10. The department may require that a person who is protectively placed or receives protective services under this chapter provide reimbursement for services or care and custody received, based on the ability of the person to pay for such costs.

History: 1995 **a.** 92; 1999 a. 32.

55.05 Protective services. (1) PREFERENCE. The department in administering the protective services program shall contract with county departments and other agencies. If the county department contracts for protective services, the department and the county departments shall give preference to an agency with consumer and other citizen representation. The department shall provide services only if no other suitable agency is available. Courts shall adhere to the same preferences in ordering protective services.

(2) CONDITIONS REQUIRED. The department or an agency

providing protective services under s. 55.04 may provide such services under any of the following conditions:

(a) The person who needs or believes he or she needs protective service may seek such service.

(b) Any interested person may request protective services on behalf of a person in need of services. A guardian may request and consent to protective services on behalf of the guardian's ward.

(c) The department may provide protective services on behalf of any person in need of such services.

(d) The court may order protective services for an individual for whom a determination of incompetency is made under s. 880.33 if the individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. The court may order psychotropic medication as a protective service under this paragraph only if a determination of incompetency is made for the individual under s. 880.33 (4m). The court may authorize a guardian to consent to forcible administration of psychotropic medication for an individual only if the court has made a finding under s. 880.33 **(4r)** (b) that the individual has substantially failed to comply with the administration of psychotropic medication under the individual's treatment plan.

(3) VOLUNTARY SERVICES PREFERRED. An individual shall receive protective services voluntarily unless ordered by the court, requested by a guardian or provided in accordance with sub. (4).

(4) EMERGENCY SERVICES. (a) Emergency services may be provided for not more than 72 hours where there is reason to believe that if the services are not provided, the person entitled to the services or others will incur a substantial risk of serious physical harm.

(b) Where it is necessary to forcibly enter a premises, the representative of an agency or of a county protective services agency shall obtain a court order authorizing entry and shall make the entry accompanied by a sheriff, police officer or member of a fire department. When it appears probable that substantial physical harm, irreparable injury or death may occur to an individual, the police officer, fire fighter or sheriff may enter a premises without a court order if the time required to obtain such an order would result in greater risk of physical harm to the individual.

(c) Where a forcible entry is made under par. (b), a report of the exact circumstances including the date, time, place, factual basis for the need of such entry and the exact services rendered shall be made and forwarded to the court within 14 days of entry by the person making such entry.

(5) ADMISSIONS WITHOUT COURT INVOLVEMENT. (a) A person who is legally and actually capable of consenting may consent to enter a group home, foster home, community–based residential facility, as defined under s. 50.01 (1g), adult family home, as defined in s. 50.01 (1), or nursing home without protective placement under s. 55.06.

(b) 1. Guardians of persons who have been found incompetent under s. 880.33 may consent to admission to a foster home, group home or community–based residential facility, as defined under s. 50.01 (1g), without a protective placement under s. 55.06 if the home or facility is licensed for fewer than 16 beds. Prior to providing that consent, and annually thereafter, the guardian shall review the ward's right to the least restrictive residential environment and consent only to admission to a home or facility that implements those rights.

2. Guardians of persons who have been found incompetent under s. 880.33 may consent to admission to a nursing home if the person is admitted directly from a hospital inpatient unit for recuperative care for a period not to exceed 3 months, unless the hospital admission was for psychiatric care. Prior to providing that consent, the guardian shall review the ward's right to the least restrictive residential environment and consent only to admission to a nursing home that implements those rights. Following the 3–month period, a placement proceeding under s. 55.06 is required.

(c) If a person admitted under par. (b) verbally objects to or otherwise actively protests such an admission, the person in charge of the home or facility shall immediately notify the agency designated under s. 55.02 for the county in which the person is living. Representatives of that agency shall visit the person as soon as possible, but no later than 72 hours after notification, and do the following:

1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the person's guardian regarding the reasons for the admission.

2. Attempt to have the person released within 72 hours if the protest is not withdrawn and necessary elements of s. 55.06 (2) or (11) are not present and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.06 (11) if all elements are present and emergency placement in that facility or another facility is necessary or file a petition for protective placement under s. 55.06 (2). The court, with the permission of the facility, may order the person to remain in the facility pending the outcome of the protective placement proceedings.

(d) The admission to a facility of a principal by a health care agent under the terms of a power of attorney for health care instrument and in accordance with ch. 155 or the admission of an individual to a nursing home or community–based residential facility under the requirements of s. 50.06 is not a protective placement under this chapter.

History: 1973 c. 284; 1975 c. 393; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 135 s. 83 (3); 1985 a. 176; 1987 a. 161 ss. 7, 13m; 1987 a. 366; 1989 a. 200; 1991 a. 316; 1993 a. 187, 316, 445.

A guardian of a person, who became incompetent after voluntarily entering a nursing home with 16 or more beds, may not consent to the person's continued residence in the home. Upon **the appointment of a guardian, the court must hold a protective placement hearing. Guardianship of Agnes** T. **189** Wis. **2d 520, 525** N.W.2d **268 (1995).**

Guardianships and Protective Placements in **Wisconsin After *Agnes T.*** Fennell. Wis. **Law. May 1995.**

55.06 Protective placement. **(1)** A protective placement under this section is a placement of a ward for the primary purpose of providing care and custody. To be eligible for placement, an individual shall have attained the age of 18, but an individual who is alleged to be developmentally disabled may receive placement upon attaining the age of **14.** No protective placement under this section may be ordered unless there is a determination of incompetency in accordance with ch. 880, except in the case of a minor who is alleged to be developmentally disabled, and there is a finding of a need for protective placement in accordance with sub. (2) except as provided in subs. (11) and (12). A procedure for adult protective placement may be initiated 6 months prior to an individual's birthday at which he or she first becomes eligible for placement.

(a) The board designated under s. 55.02 or an agency designated by it may petition for appointment of a guardian and for protective services or placement. The department shall provide for a schedule of reimbursement for the cost of such proceedings based upon the ability to pay of the proposed ward or person to be protected.

(b) If a person seeking to be the guardian of a proposed ward requests the assistance of a board designated under s. 55.02 or an agency designated by it in petitioning for guardianship or for protective service or placement, such assistance may be considered a service and may be charged for based upon the ability of such person to pay for the service.

(c) If requested by the court, the corporation counsel shall assist in conducting proceedings under this chapter.

(d) No guardian or temporary guardian may make a permanent protective placement of his or her ward unless ordered by a court under this section but may admit a ward to certain residential facilities under s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11).

(2) The department, an agency, a guardian or any interested person may petition the circuit court to provide protective placement for an individual who:

(a) Has a primary need for residential care and custody;

(b) Except in the case of a minor who is alleged to be developmentally disabled, has either been determined to be incompetent by a circuit court or has had submitted on the minor's behalf a petition for a guardianship;

(c) As a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities, is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to oneself or others. Serious harm may be occasioned by overt acts or acts of omission; and

(d) Has a disability which is permanent or likely to be permanent.

(3) (a) The petition shall state with particularity the factual basis for the allegations specified in sub. (2).

(b) The petition under sub.(2) shall be based on personal knowledge of the individual alleged to need protective placement.

(c) The petition shall be filed in the county of residence of the person to be protected.

(4) A petition for guardianship if required under sub.(2) (b) must be heard prior to placement under this section. If incompetency has been determined under **s.** 880.33 more than one year preceding the filing of an application for protective placement, the court shall review the finding of incompetency.

(5) Notice of a petition for placement shall be served upon the person sought to be placed by personal service at least 10 days prior to the time set for a hearing. Upon service of the notice the person sought to be protected shall be informed of the complete contents of the notice. The person serving the notice shall return a certificate to the circuit judge verifying that the petition has been delivered and notice given. The notice shall include the names of all petitioners. Notice shall also be served personally or by mail upon the person's guardian ad litem, legal counsel, guardian, if any, presumptive adult heirs, and upon other persons who have physical custody of the person to be protected whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private body or group from whom the person to be protected is known to be receiving aid and to such other persons or entities as the court may require. Notice shall also be served personally or by mail upon the department at least 10 days prior to the time set for hearing if the person sought to be protected may be placed in a center for the developmentally disabled. The department shall be allowed to submit oral or written testimony regarding such a placement at the hearing. The incompetent or proposed incompetent is presumed able to attend the hearing unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend.

(5m) A petition for protective placement of a person who has been admitted to a nursing home or a community–based residential facility under **s.** 50.06 shall be heard within 60 days after it is filed. If an individual under **s.** 50.06 (3) alleges that an individual is making a health care decision under **s.** 50.06 *(5)* (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60–day period.

(6) Section 880.33 (2) applies to all hearings under this chapter except for transfers of placement under sub.(9) (b), (c) and (e). **A** person to be protected shall have a guardian ad litem who is an attorney appointed in accordance with **s.** 757.48 (1) present at all hearings under this chapter if the person does not have full legal counsel. The court may, however, excuse a personal appearance by a guardian ad litem based on information contained in a written report by the guardian ad litem to the court. If the person is an adult who is indigent, the county of legal settlement shall be liable for guardian ad litem fees. If the person is a child, the person's parents or the county of legal settlement shall be liable for guardian ad litem fees as provided in s. 48.235 (8). The subject individual, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including any person making an evaluation or review under sub.(8) (c).

(7) Except for emergency placement or temporary placement under subs. (11) and (12), before placement may be ordered under this chapter the court or jury must find by clear and convincing evidence that the individual to be placed is in need of placement as provided in sub. (2).

(8) Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of placement, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The board designated under **s.** 55.02 or an agency designated by it shall cooperate with the court in securing available resources. Where applicable by reason of the particular disability, the appropriate board designated under s. 55.02 or an agency designated by it having responsibility for the place of legal residence of the individual as provided in **s.** 49.001 (6) shall make a recommendation for placement. If the court is considering placement of the individual in a center for the developmentally disabled, the court shall request a statement from the department regarding whether the placement is appropriate for the person's needs and whether it is consistent with the purpose of the center under s. 51.06 (1) unless testimony was provided by the department under sub. *(5)*. **A** copy of the comprehensive evaluation shall be provided to the guardian, the guardian ad litem, and to the individual or attorney at least 96 hours in advance of the hearing to determine placement. The court or the cooperating agency obtaining the evaluation shall request appropriate information which shall include at least the following:

(a) The address of the place where the person is residing and the person or agency who is providing services at present, if any.

(b) **A** resume of professional treatment and services provided to the person by the department or agency, if any, in connection with the problem creating the need for placement.

(c) **A** medical, psychological, social, vocational and educational evaluation and review, where necessary, and any recommendations for or against maintenance of partial legal rights as provided in s. 880.33. Such evaluation and review shall include recommendations for placement consistent with the least restrictive environment required.

(9) (a) The court may order protective services under s. 55.05 (2) (d) as an alternative to placement. When ordering placement, the court, on the basis of the evaluation and other relevant evidence shall order the appropriate board specified under s. 55.02 or an agency designated by it to protectively place the individual. Placement by the appropriate board or designated agency shall be made in the least restrictive environment consistent with the needs of the person to be placed and with the placement resources of the appropriate board specified under **s.** 55.02. Factors to be considered in making protective placement shall include the needs of the person to be protected for health, social or rehabilitative services; the level of supervision needed; the reasonableness of the placement given the cost and the actual benefits in the level of functioning to be realized by the individual; the limits of available state and federal funds and of county funds required to be appropriated to match state funds; and the reasonableness of the placement given the number or projected number of individuals who will need protective placement and given the limited funds available. The county may not be required to provide funding, in addition to its funds that are required to be appropriated to match state funds, in order to protectively place an individual. Placement under this section does not replace commitment of a person in need of acute psychiatric treatment under **s.** 51.20 or 51.45 (13). Placement may be made to such facilities as nursing homes, public medical institutions, centers for the developmentally disabled under the requirements of **s.** 51.06 (3), foster care services and other home placements, or to other appropriate facilities but may not be made to units for the acutely mentally ill. The prohibition of placements in units for the acutely mentally ill does not prevent placement by a court for short–term diagnostic procedures under par. (d). Placement in a locked unit shall require a specific finding of the court as to the need for such action. **A** placement facility may transfer a patient from a locked unit to a less restrictive environment without court approval.

(b) Transfer may be made between placement units or from a placement unit to a medical facility other than those specified in pars. (c) to (e) by a guardian or placement facility without approval by a court. When transfer is made by a placement facility, 24 hours' prior written notice of the transfer shall be provided to the guardian, when feasible. If it is not feasible to notify the guardian in advance, written notice shall be provided immediately upon transfer, and notice shall also be provided to the court and to the board designated under **s.** 55.02 or an agency designated by it within a reasonable time, not to exceed 48 hours from the time of the transfer. Upon petition to a court by a guardian, ward, or attorney, or other interested person specifying objections to a transfer, the court shall order a hearing, within 96 hours after filing of the petition, to determine whether there is probable cause to believe that the transfer is consistent with the requirements specified in par. (a) and is necessary for the best interests of the ward. The court shall notify the ward, guardian and petitioner of the time and place of the hearing, and a guardian ad litem shall be appointed to represent the ward. If the person is an adult who is indigent, the county of legal settlement shall be liable for guardian ad litem fees. If the person is a child, the person's parents or the county of legal settlement shall be liable for

guardian ad litem fees as provided in **s.** 48.235 (8). The petitioner, ward and guardian shall have the right to attend, and to present and cross-examine witnesses.

(c) Transfer to a more restrictive placement, including a locked unit, may be made with notice to the guardian, the court and appropriate board designated under s. 55.02 or an agency designated by it in the manner prescribed in par.(b). Upon petition by a guardian, ward or attorney, or other interested person specifying objections to the transfer, the court shall order a hearing as provided in par.(b).

(d) Transfer of placement may be made by a guardian to a facility providing acute psychiatric treatment for the purpose of psychiatric diagnostic procedures for a period not to exceed 10 days. A court may order such placement following petition by the placement facility or other interested person, and a hearing in the manner provided in par.(b). Such period may not be extended for the purpose of providing psychiatric treatment except in the manner provided in par.(e).

(e) Temporary transfer of placement may be made for emergency acute psychiatric inpatient treatment with prior notice to the guardian when feasible. If it is not feasible to notify the guardian in advance, written notice shall be provided immediately upon transfer, and the court or appropriate board under s. 55.02 or an agency designated by it shall be notified within 48 hours. Upon petition by a guardian, ward or attorney, or other interested person specifying objections to a transfer, the court shall order a hearing as provided in par.(b). Such treatment period may not exceed 15 days, including any transfer under par.(d). Any application for continued psychiatric inpatient treatment requires proceedings under s. 51.20 or 51.45 (13).

(10) (a) The department or any agency which is responsible for a protective placement shall review the status of each person placed at least once every 12 months from the date of admission. The court in its order of placement may, however, require that such review be conducted more frequently. The review shall include in writing an evaluation of the physical, mental and social condition of each such person, and shall be made a part of the permanent record of such person. The review shall include recommendations for discharge or placement in services which place less restrictions on personal freedom, where appropriate. The results of the review shall be furnished to the department in such form as the department may require and shall be furnished to the court that ordered the placement and to the person's guardian.

(b) The department, an agency, a guardian or a ward, or any other interested person may at any time petition the court for modification or termination of a protective placement. A petition to terminate a protective placement shall allege that the conditions which warranted placement as specified in sub.(2) are no longer present. A petition shall be heard if a hearing has not been held within the previous 6 months but a hearing may be held at any time in the discretion of the court. The petition shall be heard within 21 days of its receipt by the court.

(c) Except in the case of a minor who is developmentally disabled and who has a parent or person in the place of a parent, termination of guardianship automatically revokes any placement made or services provided under this chapter unless the placement or services are continued on a voluntary basis. Notice to this effect shall be given to the ward by the provider of services at the time of termination. If placement is made or services are provided under this chapter to a minor who is developmentally disabled, the attainment of the age of majority by such individual automatically revokes any such placement made or services provided unless the placement or services are continued on a voluntary basis, or there is a finding of incompetency and appointment of a guardian pursuant to ch. 880.

(11) (a) If from personal observation of a sheriff, police officer, fire fighter, guardian, if any, or authorized representative of a board designated under s. 55.02 or an agency designated by it it appears probable that an individual will suffer irreparable injury or death or will present a substantial risk of serious physical harm to others as a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities if not immediately placed, the person making the observation may take into custody and transport the individual to an appropriate medical or protective placement facility. The person making placement shall prepare a statement at the time of detention. providing specific factual information concerning the person's observations and the basis for emergency placement. The statement shall be filed with the director of the facility and shall also be filed with any petition under sub.(2). At the time of placement the individual shall be informed by the director of the facility or the director's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family and the right to have an attorney provided at public expense, as provided under **s.** 967.06 and ch. 977, if the individual is a child or is indigent. The director or designee shall also provide the individual with a copy of the statement by the person making emergency placement.

(am) Whoever signs a statement under par.(a) knowing the information contained therein to be false may be fined not more than $5,000 or imprisoned for not more than 7 years and 6 months or both.

(ar) A person who acts in accordance with this subsection is not liable for any actions performed in good faith.

(b) Upon detention, a petition shall be filed under sub.(2) by the person making such emergency placement and a preliminary hearing shall be held within 72 hours, excluding Saturdays, Sundays and legal holidays, to establish probable cause to believe the grounds for protective placement under sub.(2). The sheriff or other person making placement under par.(a) shall provide the individual with written notice and orally inform him or her of the time and place of the preliminary hearing. If the detainee is not under guardianship, a petition for guardianship shall accompany the placement petition, except in the case of a minor who is alleged to be developmentally disabled. In the event that protective placement is not appropriate, the court may elect to treat a petition for placement as a petition for commitment under s. 51.20or51.45 (13).

(c) Upon a finding of probable cause under par.(b), the court may order temporary placement up to 30 days pending the hearing for a permanent placement, or the court may order such protective services as may be required.

(d) A law enforcement agency, fire department, county department designated under s. 55.02 or an agency designated by that county department shall designate at 'least one employee authorized to take an individual into custody under this subsection who shall attend the in–service training on emergency detention and emergency protective placement offered by a county department of community programs under s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the designated employee's jurisdiction offers an in–service training program.

(12) When a ward lives with the guardian, the guardian may make temporary placement of the ward. Placement may be made to provide the guardian with a vacation or to temporarily release the guardian for a family emergency. Such placement may be made for not more than 30 days but the court may upon application grant an additional period not to exceed **60** days in all. The application shall include such information **as** the court may reasonably deem necessary. When reviewing the application, the court shall provide the least restrictive placement which is consistent with the needs of the ward.

(14) Prior to discharge from a protective placement the appropriate board which is responsible for placement shall review the need for provision of continuing protective services or for continuation of full or limited guardianship or provision for such guardianship if the individual has no guardian. Recommendation shall be made to the court if the recommendation includes a course of action for which court approval would be required. Prior to discharge from any state institute or center for the developmentally disabled, the department shall make such review under s. 51.35.

(15) A guardian of a ward placed under this section shall have the duty to take reasonable steps to assure that the ward is well treated, properly cared for, and is provided with the opportunity to exercise legal rights. Notice of discharge under **s.** 51.35 (4) shall be given to the guardian.

(16) Placements to centers for the developmentally disabled and discharges from such institutions shall be in compliance with **s.** 51.35 (4).

(17) (a) Any records of the court pertaining to protective services or placement proceedings, including evaluations, reviews

and recommendations prepared under sub.(8) (c), are not open to public inspection but are available to:

1. The subject of the proceedings and the subject's guardian at all times.

2. The subject's attorney or guardian ad litem, without the subject's consent and without modification of the records, in order to prepare for any court proceedings relating to the subject's protective services or placement or relating to the subject's guardianship.

3. Other persons only with the informed written consent of the subject as provided in s. 51.30 (2) or under an order of the court that maintains the records.

(b) If the subject is an adult who has been adjudged incompetent under ch. 880 or is a minor, consent for release of information from and access to the court records may be given only as provided in s. 51.30 (5).

(c) All treatment and service records pertaining to a person who is protected under this chapter or for whom application has been made for protection under this chapter are confidential and privileged to the subject. Section 51.30 governs access to treatment and service records.

(18) An appeal may be taken to the court of appeals from a final judgment or final order under this section within the time period specified in s. 808.04 **(3)** and in accordance with s. 809.40 by the subject of the petition or the individual's guardian, by any petitioner or by the representative of the public.

History: 1973 c. 284; 1975 c. 41; 1975 c. 94 s. 3; 1975 c. 189 s. 99 (2); 1975 c. 393,421,422; 1975 c. 430 ss. 67 to 71, 80; 1977 c. 26,299,428; 1977 c. 449 s. 497; 1979 c. 32 s. 92 (1); 1979 c. 110 s. 60 (1); 1979 c. 221; 1981 c. 314 s. 146; 1981 c. 379; 1983 a. 27; 1983 a. 189 s. 329 (19); 1983 a. 219; 1985 a. 29 ss. 1143,3202 (23); 1987 a. 366; 1989 a. 31,359; 1992 a. 269; 1993 a. 187,451; 1995 a. 27, 92; 1997 a. 237,283.

A "common sense" finding of incompetency was insufficient for placement under this section. If competent when sober, an alcoholic has the right to choose to continue an alcoholic lifestyle. Guardianship & Protective Placement of Shaw, 87 Wis. 2d 503, 275 N.W.2d 143 (Ct. App. 1979).

There must be an annual review of each protective placement by a judicial officer. The requirements of ss. 51.15 and 51.20 must be afforded to protectively placed individuals facing involuntary commitment under s. 55.06 (9) (d) and (e). State ex rel. Watts v. Combined Community Services, 122 Wis. 2d 65,362 N.W.2d 104 (1985).

A court's finding of limited incompetence under ch. 880 fulfills the incompetency requirement for protective placement under this section. Matter of Guardianship of K. H. K. 139 Wis. 2d 190,407 N.W.2d 281 (Ct. App. 1987).

When a placement extended past the 30–day limit under sub.(11) (c) before a final hearing was held, the court lost authority to extend the placement. In Matter of Guardianship of N. N. 140 Wis. 2d 61,409 N.W.2d 388 (Ct. App. 1987).

A county's duty under sub.(9) (a) to provide the least restrictive environment is not limited according to funds available through state and federal funds and those that the county appropriates as matching funds. Protective Placement of D.E.R. 155 Wis. 2d 240,455 N.W.2d 239 (1990).

A court may order an agency to do planning and implementation work necessary to fulfill the obligation to order placement conforming to sub.(9) (a) and s. 51.61 (1) (e). In Matter of J.G.S. 159 Wis. 2d 685,465 N.W.2d 227 (Ct. App. 1990).

Sub.(11) (c) required dismissal of the proceedings for failure to hold a permanent placement hearing within 30 days of the probable cause hearing; immediate refiling of the petition and emergency detention following dismissal without prejudice was impermissible. State ex. rel Sandra D. v. Getto, 175 Wis. 2d 490, 498 N.W.2d 893 (Ct. App. 1993).

A guardian of a person, who became incompetent after voluntarily entering a nursing home with 16 or more beds, may not consent to the person's continued residence in the home. Upon the appointment of a guardian, the court must hold a protective placement hearing. Guardianship of Agnes T. 189 Wis. 2d 520, 525 N.W.2d 268 (1995).

An emergency protective placement under sub.(11) must be based on personal observation by one of the individuals listed in sub.(11) (a). Costs could not be assessed against the subject of an emergency placement proceeding that was outside the statutory guidelines. Ethelyn LC. v. Waukesha County, 221 Wis. 2d 109, 584 N.W.2d 211 (Ct. App. 1998).

The statutory provisions for an interested person's formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence, or raise evidentiary objections. A court could consider such participation helpful and, in its discretion, could allow an interested person to participate to the extent it considers appropriate. Coston v. Joseph P. 222 Wis. 2d 1,586 N.W.2d 52 (Ct. APP. 1998).

A circuit court must hold some form of hearing on the record, either a full due process hearing or a summary hearing, to continue a protective placement. The circuit court must also make findings based on the factors enumerated in sub.(2) in support of the need for continuation. County of Dunn v. Goldie H. 2001 WI 102,245 Wis. 2d 538,629 N.W.2d 189.

A circuit court loses competence if the hearing under s. 55.06 (11) (b) is not held within 72 hours after the person is first taken into custody. The filing of a new petition does not start the clock anew. Kindcare, Inc. v. Judith G. 2002 WI App 36, 250 Wis. 2d 817,640 N.W.2d 839.

In protective placements under sub.(9) (a), counties must make an affirmative showing of a good faith, reasonable effort to find an appropriate placement and to secure funding to pay for an appropriate placement. Counties bear the burden of showing whether funds are available and whether appropriate placements may be developed within the limits of reauired funds. Dunn Countv v. Judy K. 2002 WI 87, ___ Wis. 2d ___, ___ N.W.2d ___.

Sub.(17) requires the closing of all records filed with respect to ch. 55 proceedings, including the index, docket, and files maintained by the register in probate. 67 Atty. Gen. 130.

Under sub.(1) (c), the duty of the corporation counsel is to assist the court and not to act as counsel for petitioning private parties. Under sub.(9) (a), the court should order protective placement in an existing facility. 68 Atty. Gen. 97.

Protective placements are discussed. 72 Atty. Gen. 194.

"Residence" under s. 55.06 (3) (c) is defined in s. 49.01 (8g). 76 Atty. Gen. 103.

New legal protection for persons with mental handicaps. Greenley and Zander, WBB April, 1986.

Guardianships and Protective Placements. Viney. Wis. Law. Aug. 1991.

Guardianships and Protective Placements in Wisconsin After *Agnes T.* Fennell. Wis. Law. May 1995.

55.07 Patients' rights. (1) The rights and limitations upon rights, procedures for enforcement of rights and penalties prescribed in s. 51.61 apply to persons who receive services under this chapter, whether on a voluntary or involuntary basis.

(2) A parent who has been denied periods of physical placement under s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian with respect to access to a child's records under this chapter.

History: 1977 c. 428; 1987 a. 355.

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (Im) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5–99.

CHAPTER 146
MISCELLANEOUS HEALTH PROVISIONS

146.81 Health care records; definitions. In **ss.** 146.81 to 146.84:

(1) "Health care provider" means any of the following:

(a) A nurse licensed under ch. 441.

(b) A chiropractor licensed under ch. 446.

(c) **A** dentist licensed under ch. 447.

(d) A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.

(dg) A physical therapist licensed under subch. III of ch. 448.

(dr) **A** podiatrist licensed under subch. IV of ch. 448.

(em) A dietitian certified under subch. V of ch. 448.

(eq) An athletic trainer licensed under subch. VI of ch. 448.

(es) An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.

(f) *An* optometrist licensed under ch. 449.

(fm) A pharmacist licensed under ch. 450.

(g) *An* acupuncturist certified under ch. 451.

(h) A psychologist licensed under ch. 455.

(hg) A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

(hm) **A** speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(hp) **A** massage therapist or bodyworker certified under ch. 460.

NOTE: Par.(hp) is shown as amended eff. 3-1-03 by 2001 Wis. Act 74. Prior to 3-1-03 it reads:

(hp) A massage therapist or bodyworker issued a license of registration under subch. XI of eh. 440.

(i) A partnership of any providers specified under pars.(a) to

(j) A corporation or limited liability company of any providers specified under pars.(a) to (hp) that provides health care services.

(k) An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

(L) A hospice licensed under subch. IV of ch. 50.

(m) An inpatient health care facility, as defined in **s.** 50.135 (1).

(n) A community-based residential facility, as defined in s. 50.01 (1g).

(p) A rural medical center, as defined in s. 50.50 (11).

(2) "Informed consent" means written consent to the disclosure of information from patient health care records to an individual, agency or organization that includes all of the following:

(a) The name of the patient whose record is being disclosed.

(b) The type of information to be disclosed.

(c) The types of health care providers making the disclosure.

(d) The purpose of the disclosure such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.

(e) The individual, agency or organization to which disclosure may be made.

(f) The signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person.

(g) The date on which the consent is signed.

(h) The time period during which the consent is effective.

(3) "Patient" means a person who receives health care services from a health care provider.

(4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject to **s.** 51.30, reports collected under s. 69.186, records of tests administered under **s.** 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), fetal monitor tracings, as defined under **s.** 146.817(1), or a pupil's physical health records maintained by a school under s. 118.125. "Patient health care records" also includes health summary forms prepared under **s.** 302.388 (2).

(5) "Person authorized by the patient" means the parent, guardian or legal custodian of a minor patient, as defined in **s.** 48.02 (8) and (11), the person vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m) or (4n), the guardian of a patient adjudged incompetent, as defined in **s.** 880.01 **(3)** and (4), the personal representative or spouse of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under **s.** 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse survives a deceased patient, "person authorized by the patient" also means an adult member of the deceased patient's immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by the patient to decide upon the release of records, if no guardian has been appointed for the patient.

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 491r; 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 a. 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 a. 38, 70, 74, 80, 89.

146.815 Contents of certain patient health care records.

(1) Patient health care records maintained for hospital inpatients shall include, if obtainable, the inpatient's occupation and the industry in which the inpatient is employed at the time of admission, plus the inpatient's usual occupation.

(2) (a) If a hospital inpatient's health problems may be related to the inpatient's occupation or past occupations, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(b) If a hospital inpatient's health problems may be related to the occupation or past occupations of the inpatient's parents, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(3) The department shall provide forms that may be used to record information specified under sub.(2) and shall provide guidelines for determining whether to prepare the occupational history required under sub.(2). Nothing in this section shall be construed to require a hospital or physician to collect information required in this section from or about a patient who chooses not to divulge such information.

History: 1981 c. 214.

146.817 Preservation of fetal monitor tracings and microfilm copies. (1) In this section, "fetal monitor tracing" means documentation of the heart tones of a fetus during labor and delivery of the mother of the fetus that are recorded from an electronic fetal monitor machine.

(2) (a) Unless a health care provider has first made and preserved a microfilm copy of a patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the patient's fetal monitor tracing only if **35** days prior to the deletion or destruction the health care provider provides written notice to the patient.

(b) If a health care provider has made and preserved a microfilm copy of a patient's fetal monitor tracing and if the health care provider has deleted or destroyed part or all of the patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the microfilm copy of the patient's fetal monitor tracing only if **35** days prior to the deletion or destruction the health care provider provides written notice to the patient.

(c) The notice specified in pars.(a) and (b) shall be sent to the patient's last–known address and shall inform the patient of the imminent deletion or destruction of the fetal monitor tracing or of the microfilm copy of the fetal monitor tracing and of the patient's right, within **30** days after receipt of notice, to obtain the fetal monitor tracing or the microfilm copy of the fetal monitor tracing from the health care provider.

(d) The notice requirements under this subsection do not apply after **5** years after a fetal monitor tracing was first made.

History: 1987 a. 27,399,403.

146.819 Preservation or destruction of patient health care records. (1) Except as provided in sub.(4), any health care provider who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who was an independent practitioner shall do one of the following for all patient health care records in the possession of the health care provider when the health care provider ceased business or practice or died:

(a) Provide for the maintenance of the patient health care records by a person who states, in writing, that the records will be maintained in compliance with **ss. 146.81** to **146.835.**

(b) Provide **for** the deletion or destruction of the patient health care records.

(c) Provide for the maintenance of some of the patient health care records, as specified in par.(a), and for the deletion or destruction of some of the records, as specified in par.(b).

(2) If the health care provider or personal representative provides for the maintenance of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide written notice, by 1st class mail, to each patient or person authorized by the patient whose records will be maintained, at the last–known address of the patient or person, describing where and by whom the records shall be maintained.

(b) Publish, under ch. **985,** a class **3** notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying where and by whom the patient health care records shall be maintained.

(3) If the health care provider or personal representative provides for the deletion or destruction of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide notice to each patient or person authorized by the patient whose records will be deleted or destroyed, that the records pertaining to the patient will be deleted or destroyed. The notice shall be provided at least **35** days prior to deleting or destroying the records, shall be in writing and shall be sent, by 1st class mail, *to* the last–known address of the patient to whom the records pertain or the last–known address of the person authorized by the patient. The notice shall inform the patient or person authorized by the patient of the date on which the records will be deleted or destroyed, unless the patient or person retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(b) Publish, under ch. **985,** a class *3* notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying the date on which the records will be deleted or destroyed, unless the patient or person authorized by the patient retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(4) This section does not apply to a health care provider that is any of the following:

(a) **A** community–based residential facility or nursing home licensed under **s. 50.03.**

(b) A hospital approved under **s. 50.35.**

(c) A hospice licensed under **s. 50.92.**

(d) A home health agency licensed under **s. 50.49 (4).**

(f) **A** local health department, as defined in s. **250.01 (4),** that ceases practice or business and transfers the patient health care records in its possession to a successor local health department.

History: 1991 a. 269; 1993 a. 27; 1999 a. 9.

Cross Reference: See also **ch. Med 21,** Wis. adm. **code.**

146.82 Confidentiality of patient health care records.

(1) CONFIDENTIALITY. All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with s. **146.995, 253.12 (2)** or **979.01 or** testimony authorized under **s. 905.04 (4) (h).**

(2) ACCESS WITHOUT INFORMED CONSENT. (a) Notwithstanding sub.(1), patient health care records shall be released upon request without informed consent in the following circumstances:

1. To health care facility staff committees, or accreditation or health care services review organizations for the purposes of conducting management audits, financial audits, program monitoring and evaluation, health care services reviews or accreditation.

2. To the extent that performance of their duties requires access to the records, to a health care provider or any person acting under the supervision of a health care provider or to a person licensed under s. **146.50,** including medical staff members, employees or persons serving in training programs or participating in volunteer programs and affiliated with the health care provider, if any of the following is applicable:

a. The person is rendering assistance to the patient.

b. The person is being consulted regarding the health of the patient.

c. The life or health of the patient appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance.

d. The person prepares or stores records, for the purposes of the preparation or storage of those records.

3. To the extent that the records are needed for hilling, collection or payment of claims.

4. Under a lawful order of a court of record.

5. In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility licensure or certification or individual licensure or certification. The private pay patient, except if a resident of a nursing home, may deny access granted under this subdivision by annually submitting to a health care provider, other than a nursing home, a signed, written request on a form provided by the department. The provider, if a hospital, shall submit a copy of the signed form to the patient's physician.

6. For purposes of research if the researcher is affiliated with the health care provider and provides written assurances to the custodian of the patient health care records that the information will be used only for the purposes for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final product of the research will not reveal information that may serve to identify the patient whose records are being released under this paragraph without the informed consent of the patient. The private pay patient may deny access granted under this subdivision by annually submitting to the health care provider a signed, written request on a form provided by the department.

7. To a county agency designated under s. **46.90 (2) or** other investigating agency under **s. 46.90** for purposes of s. **46.90 (4)** (a) and **(5)** or to the county protective services agency designated under **s. 55.02** for purposes of **s. 55.043.** The health care provider may release information by initiating contact with the county agency or county protective services agency without receiving a request for release of the information from the county agency or county protective services agency.

8. To the department under s. **255.04.** The release of a patient

health care record under this subdivision shall be limited to the information prescribed by the department under s. 255.04 (2).

9. a. In this subdivision, "abuse" has the meaning given in **s.** 51.62 (1) (ag); "neglect" has the meaning given in **s.** 51.62 (1) (br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under **s.** 880.33.

b. Except as provided in subd. 9. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under **s.** 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of a person with developmental disabilities, as defined under **s.** 51.62 (1) (am), who resides in or who is receiving services from an inpatient health care facility, as defined under **s.** 51.62 (1) (b), or a person with mental illness, as defined under **s.** 51.62 (1) (bm).

c. If the patient, regardless of age, has a guardian appointed under **s.** 880.33, or if the patient is a minor with developmental disability, as defined in **s.** 51.01 (5) (a), who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under **s.** 880.33, information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 9. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian's appointment or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under **s.** 48.831 and does not have a guardian appointed under **s.** 880.33, the name, address and telephone number of the parent or guardian appointed under **s.** 48.831 of the patient.

d. Except as provided in subd. 9. e., any staff member who wishes to obtain additional information about a patient described in subd. 9. c. shall notify the patient's guardian or, **if** applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 9. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good–faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in **s.** 48.02 (11) or for whom a guardian that **is** an agency of the state or a county has been appointed.

10. To persons as provided under s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29. if the patient files a submission of controversy under **s.** 655.04 (1), 1983 stats., on or after July 20, 1985 and before June 14, 1986, for the purposes of **s.** 655.17 (7) (b), as created by 1985 Wisconsin Act 29.

11. To a county department, as defined under **s.** 48.02 (2g), a sheriff or police department or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with a county department, sheriff or police department or district attorney without receiving a request for release of the information. **A** person to whom a report or record is disclosed under this subdivision may not further disclose it, except to the persons, for the purposes and under the conditions specified in **s.** 48.981 (7).

12. To a school district employee or agent, with regard to patient health care records maintained by the school district by which he or she is employed or is an agent, if any of the following apply: a. The employee or agent has responsibility for preparation or storage of patient health care records. b. Access to the patient health care records is necessary to comply with a requirement in federal or state law.

13. To persons and entities under **s.** 940.22.

14. To a representative of the board on aging and long–term care, in accordance with **s.** 49.498 (5) (e).

15. To the department under **s.** 48.60 (5) (c), 50.02 (5) or 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under **s.** 48.60 (5) (a), 50.035 (5) (b), 50.04 (2t) (b) or 51.64 (2).

16. To a designated representative of the long–term care ombudsman under s. 16.009 (4), for the purpose of protecting and advocating the rights of an individual 60 years of age or older who resides in a long–term care facility, as specified in s. 16.009 (4) (b).

17. To the department under s. 50.53 (2).

18. Following the death of a patient, to a coroner, deputy coroner, medical examiner or medical examiner's assistant, for the purpose of completing a medical certificate under **s.** 69.18 (2) or investigating a death under **s.** 979.01 or 979.10. The health care provider may release information by initiating contact with the office of the coroner or medical examiner without receiving a request for release of the information and shall release information upon receipt of an oral or written request for the information from the coroner, deputy coroner, medical examiner or medical examiner's assistant. The recipient of any information under this subdivision shall keep the information confidential except as necessary to comply with s. 69.18, 979.01 or 979.10.

18m. If the subject of the patient health care records is a child or juvenile who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or a secured correctional facility, including a placement under **s.** 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under **s.** 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under **s.** 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under **s.** 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under **s.** 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child or juvenile, or to an agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements, to the foster parent or treatment foster parent of the child or juvenile or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child or juvenile is placed, as provided in **s.** 48.371 or 938.371.

19. To an organ procurement organization by a hospital pursuant to s. 157.06 (5) (b) 1.

20. If the patient health care records do not contain information and the circumstances of the release do not provide information that would permit the identification of the patient.

21. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to

a prisoner's patient health care records under s. 302.388 or to the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under **s.** 302.388 (4).

(b) Except as provided in **s.** 610.70 (3) and (5), unless authorized by a court of record, the recipient of any information under par.(a) shall keep the information confidential and may not disclose identifying information about the patient whose patient health care records are released.

(c) Notwithstanding sub.(1), patient health care records shall be released to appropriate examiners and facilities in accordance with ss. 971.17 (2) *(e),* (4) (c) and (7) (c), 980.03 (4) and 980.08 (3). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 or ch. 980.

(d) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

(3) REPORTS MADE WITHOUT INFORMED CONSENT. (a) Notwithstanding sub.(1), a physician who treats a patient whose physical or mental condition in the physician's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(b) Notwithstanding sub.(1), an optometrist who examines a patient whose vision in the optometrist's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(c) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105.

Because under **s.** 905.04 (4) (f) there is no privilege for chemical tests for intoxication, results of a test taken for diagnostic purposes are admissible in an OMVWI trial without patient approval. City of Muskego v. Godec, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

Patient billing records requested by the state in a fraud investigation under s. 46.25 [now **s.** 49.22] may be admitted into evidence under the exception to confidentiality found under sub. (2) (a) 3. State v. Allen, 200 Wis. 2d 301, 546 N.W.2d 517 (1996).

This section does not restrict access to medical procedures and did not prevent a police officer from being present during an operation. State v. Thompson, 222 Wis. 2d 179, 585 N.W.2d 905 (Ct. App. 1998).

The provision of confidentiality for patient health records is not an absolute bar to the release of information without the patient's informed consent. Sub. **(2)** provides numerous exceptions. Information of previous assaultive behavior by a nursing home resident was not protected by the physician–patient privilege and was subject to release by "lawful court order." Crawford v. Care Concepts, Inc. 2001 WI App 45, 243 Wis. 2d 119, 625 N.W.2d 876. Disclosure of patient health care records in Wisconsin. Lehner, WBB Aug. 1984.

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.

146.83 Access to patient health care records. (1) Except as provided in **s.** 51.30 or 146.82 (2), any patient or other person may, upon submitting a statement of informed consent:

(a) Inspect the health care records of a health care provider pertaining to that patient at any time during regular business hours, upon reasonable notice.

(b) Receive a copy of the patient's health care records upon payment of fees, as established by rule under sub.(3m).

(c) Receive a copy of the health care provider's X–ray reports or have the X–rays referred to another health care provider of the patient's choice upon payment of fees, as established by rule under sub.(3m).

(1m) (a) **A** patient's health care records shall be provided to the patient's health care provider upon request and, except as provided in **s.** 146.82 (2), with a statement of informed consent.

(b) The health care provider under par.(a) may be charged reasonable costs for the provision of the patient's health care records.

(2) The health care provider shall provide each patient with a statement paraphrasing the provisions of this section either upon admission to an inpatient health care facility, as defined in **s.** 50.135 (1), or upon the first provision of services by the health care provider.

(3) The health care provider shall note the time and date of each request by a patient or person authorized by the patient to inspect the patient's health care records, the name of the inspecting person, the time and date of inspection and identify the records released for inspection.

(3m) (a) The department shall, by rule, prescribe fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge under sub.(1) (b) for duplicate patient health care records and under sub.(1) (c) for duplicate X–ray reports or the referral of X–rays to another health care provider of the patient's choice. The rule shall also permit the health care provider to charge for actual postage or other actual delivery costs. In determining the approximation of actual costs for the purposes of this subsection, the department may consider all of the following factors: 1. Operating expenses, such as wages, rent, utilities, and duplication equipment and supplies. 2. The varying cost of retrieval of records, based on the different media on which the records are maintained. 3. The cost of separating requested patient health care records from those that are not requested. 4. The cost of duplicating requested patient health care records. 5. The impact on costs of advances in technology.

(b) By January 1, 2006, and every 3 years thereafter, the department shall revise the rules under par.(a) to account for increases or decreases in actual costs.

(4) No person may do any of the following:

(a) Intentionally falsify a patient health care record.

(b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with intent to prevent its release to the patient, *to* his or her guardian appointed under ch. 880, to his or her health care provider with a statement of informed consent, or under the conditions specified in **s.** 146.82 (2), or to a person with a statement of informed consent.

(c) Intentionally destroy or damage records in order to prevent or obstruct **an** investigation or prosecution.

History: 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109.

Sub. (1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies **of** health care records. Cruz v. **All** Saints Healthcare System, Inc. 2001 WI App 67, 242 Wis. 2d 432, 625 N.W.2d 344.

146.835 Parents denied physical placement rights. A parent who has been denied periods of physical placement under s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian under this chapter with respect to access to that child's patient health care records under **s.** 146.82 or 146.83.

History: 1987 a. 355.

146.836 Applicability. Sections 146.815, 146.82, 146.83 (4) and 146.835 apply to all patient health care records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

History: 1999 a. 78.

146.84 Violations related to patient health care records.

(1) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION. (a) **A** custodian of records incurs no liability under par.(bm) for the release of records in accordance with s. 146.82 or 146.83 while acting in good faith.

(b) Any person, including the state or any political subdivision of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $25,000 and costs and reasonable actual attorney fees.

(bm) Any person, including the state or any political subdivision of the state, who negligently violates **s.** 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $1,000 and costs and reasonable actual attorney fees.

(c) **An** individual may bring an action to enjoin any violation of s. 146.82 or 146.83 or to compel compliance with s. 146.82 or 146.83 and may, in the same action, seek damages as provided in this subsection.

(2) PENALTIES. (a) Whoever does any of the following may be fined not more than $25,000 or imprisoned for not more than 9 months or both:

1. Requests or obtains confidential information under **s.** 146.82 or 146.83 (1) under false pretenses.

2. Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

3. Violates s. 146.83 (4).

(b) Whoever negligently discloses confidential information in violation of s. 146.82 is subject to a forfeiture of not more than $1,000 for each violation.

(c) Whoever intentionally discloses confidential information in violation of s. 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than $100,000 or imprisoned not more than 3 years and 6 months, or both.

(3) DISCIPLINE OF EMPLOYEES. Any person employed by the state or any political subdivision of the state who violates s. 146.82 or 146.83, except a health care provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended without pay.

(4) EXCEPTIONS. This section does not apply to any of the following:

(a) Violations by a nursing facility, as defined under s. 49.498 (1) (i), of the right of a resident of the nursing facility to confidentiality of his or her patient health care records.

(b) Violations by a nursing home, as defined under s. 50.01 (3), of the right of a resident of the nursing home to confidentiality of his or her patient health care records.

History: 1991 a. 39; 1993 a. 445; 1999 a. 9, 79.

Sub.(1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. Cruz v. All Saints Healthcare System, Inc. 2001 WI App 67, 242 Wis. 2d 432, 625 N.W.2d 344.

146.885 Acceptance of assignment for medicare. The department shall annually provide aging units, as defined in s. 46.82 (1) (a), with enrollment cards for and materials explaining the voluntary program that is specified in s. 71.55 (10) (b), for distribution to individuals who are eligible or potentially eligible for participation in the program. The state medical society shall supply the department with the enrollment cards and the explanatory materials for distribution under this section.

History: 1989 a. 294, 359; Stats. 1989 s. 146.885; 1991 a. 235.

146.89 Volunteer health care provider program. (1) In this section, "volunteer health care provider" means an individual who is licensed as a physician under ch. 448, dentist under ch. 447, registered nurse, practical nurse or nurse–midwife under ch. 441, optometrist under ch. 449 or physician assistant under ch. 448 or certified as a dietitian under subch. V of ch. 448 and who receives no income from the practice of that health care profession or who receives no income from the practice of that health care profession when providing services at the nonprofit agency specified under sub.(3).

(2) (a) A volunteer health care provider may participate under this section only if he or she submits a joint application with a nonprofit agency to the department of administration and that department approves the application. The department of administration shall provide application forms for use under this paragraph.

(b) The department of administration may send an application to the medical examining board for evaluation. The medical examining board shall evaluate any application submitted by the department of administration and return the application to the department of administration with the board's recommendation regarding approval.

(c) The department of administration shall notify the volunteer health care provider and the nonprofit agency of the department's decision to approve or disapprove the application.

(d) Approval of an application of a volunteer health care provider is valid for one year. If a volunteer health care provider wishes to renew approval, he or she shall submit a joint renewal application with a nonprofit agency to the department of administration. The department of administration shall provide renewal application forms that are developed by the department of health and family services and that include questions about the activities that the individual has undertaken as a volunteer health care provider in the previous 12 months.

(3) Any volunteer health care provider and nonprofit agency whose joint application is approved under sub.(2) shall meet the following applicable conditions:

(a) The volunteer health care provider shall provide services under par.(b) without charge at the nonprofit agency, if the joint application of the volunteer health care provider and the nonprofit agency has received approval under sub.(2) (a).

(b) The nonprofit agency may provide the following health care services:

1. Diagnostic tests.
2. Health education.
3. Information about available health care resources.
4. Office visits.
5. Patient advocacy.
6. Prescriptions.
7. Referrals to health care specialists.
8. Dental services, including simple tooth extractions and any necessary suturing related to the extractions, performed by a dentist who is a volunteer health provider.

(c) The nonprofit agency may not provide emergency medical services, hospitalization or surgery, except as provided in par.(b) 8.

(d) The nonprofit agency shall provide health care services primarily to low–income persons who are uninsured and who are not recipients of any of the following:

2. Medical assistance under subch. IV of ch. 49.
3. Medicare under 42 USC 1395–1395ccc.

(4) Volunteer health care providers who provide services under this section are, for the provision of these services, state agents of the deuartment of health and family services for purposes of ss. 165.25'(6), 893.82 (3) and 895.46.

History: 1989 a. 206; 1991 a. 269; 1993 a. 28, 490; 1995 a. 21 ss. 4378 to 4380, 9126 (19); 1997 a. 27, 57, 67; 1999 a. 23.

146.905 Reduction in fees prohibited. (1) Except as provided in sub.(2), a health care provider, as defined in s. 146.81 (I), that provides a service or a product to an individual with coverage under a disability insurance policy, as defined in s. 632.895 (1) (a), may not reduce or eliminate or offer to reduce or eliminate coinsurance or a deductible required under the terms of the disability insurance policy.

(2) Subsection (1) does not apply if payment of the total fee would impose an undue financial hardship on the individual receiving the service or product.

History: 1991 a. 250; 1995 a. 225.

146.91 Long–term care insurance. (1) In this section, "long–term care insurance" means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home including but not limited to adult day care and continuing care retirement communities.

(2) The department, with the advice of the council on long–term care insurance, the office of the commissioner of insurance, the board on aging and long–term care and the department of employee trust funds, shall design a program that includes the following:

(a) Subsidizing premiums for persons purchasing long–term care insurance, based on the purchasers' ability to pay.

(b) Reinsuring by the state of policies issued in this state by long–term care insurers.

(c) Allowing persons to retain liquid assets in excess of the amounts specified in s. 49.47 (4) (b) 3g., 3m. and 3r., for purposes of medical assistance eligibility, if the persons purchase long–term care insurance.

(3) The department shall collect any data on health care costs and utilization that the department determines to be necessary to design the program under sub.(2).

(5) In designing the program, the department shall consult with the federal department of health and human services to determine the feasibility of procuring a waiver of federal law or regulations that will maximize use of federal medicaid funding for the program designed under sub.(2).

(6) The department, with the advice of the council on long–term care insurance, may examine use of tax incentives for the sale and purchase of long–term care insurance.

History: 1987 a. 27; 1989 a. 56.

146.93 Primary health care program. (1) (a) From the appropriation under s. 20.435 (4) *(gp)*, the department shall

maintain a program for the provision of primary health care services based on the primary health care program in existence on June 30, 1987. The department may promulgate rules necessary to implement the program.

(c) The department shall seek to obtain a maximum of donated or reduced–rate health care services for the program and shall seek to identify and obtain a maximum of federal funds for the program.

(2) The program under sub.(1) (a) shall provide primary health care, including diagnostic laboratory and X–ray services, prescription drugs and nonprescription insulin and insulin syringes.

(3) The program under sub.(1) (a) shall be implemented in those counties with high unemployment rates and within which a maximum of donated or reduced–rate health care services can be obtained.

(4) The health care services of the program under sub.(1) (a) shall be provided to any individual residing in a county under sub.(3) who meets all of the following criteria:

(a) The individual is either unemployed or is employed less than 25 hours per week.

(b) The individual's family income is not greater than 150% of the federal poverty line, as defined under 42 USC 9902 (2).

(c) The individual does not have health insurance or other health care coverage and is unable to obtain health insurance or other health care coverage.

History: 1985 **a.** 29; 1987 **a.** 27; 1989 **a. 31;** 1999 **a.** 9.

146.95 Patient visitation. (1) DEFINITIONS. In this section:

(a) "Health care provider" has the meaning given in **s.** 155.01 (7).

(b) "Inpatient health care facility" has the meaning given in **s.** 252.14 (1) (d).

(c) "Treatment facility" has the meaning given in **s.** 51.01 (19).

(2) PATIENT–DESIGNATED VISITORS. (a) Any individual who is 18 years of age or older may identify to a health care provider at an inpatient health care facility at any time, either orally or in writing, those persons with whom the individual wishes to visit while the individual is a patient at the inpatient health care facility. Except as provided in par.(b), no inpatient health care facility may deny visitation during the inpatient health care facility's regular visiting hours to any person identified by the individual.

(b) Subject to **s.** 51.61 for a treatment facility, an inpatient health care facility may deny visitation with a patient to any person if any of the following applies:

1. The inpatient health care facility or a health care provider determines that the patient may not receive any visitors.

2. The inpatient health care facility or a health care provider determines that the presence of the person would endanger the health or safety of the patient.

3. The inpatient health care facility determines that the presence of the person would interfere with the primary operations of the inpatient health care facility.

4. The patient has subsequently expressed in writing to a health care provider at the inpatient health care facility that the patient no longer wishes to visit with the person. Unless subd. 2. applies, an inpatient health care facility may not under this subdivision deny visitation to the person based on a claim by someone other than a health care provider that the patient has orally expressed that the patient no longer wishes to visit with that person.

History: 1997 **a. 153.**

146.96 Uniform claim processing form. Beginning no later than July 1, 2004, every health care provider, as defined in **s.** 146.81 (1), shall use the uniform claim processing form developed by the commissioner of insurance under **s.** 601.41 (9) (b) when submitting a claim to an insurer.

History: 2001 **a.** 109.

146.99 Assessments. The department shall, within 90 days after the commencement of each fiscal year, assess hospitals, as defined in **s.** 50.33 (2), a total of $1,500,000, in proportion to each hospital's respective gross private–pay patient revenues during the hospital's most recently concluded entire fiscal year. Each hospital shall pay its assessment on or before December 1 for the fiscal year. All payments of assessments shall be deposited in the appropriation under **s.** 20.435 (4) (gp).

History: 1985 a. 29; 1987 **a.** 27; 1989 **a. 31;** 1991 **a.** 269; 1999 **a.** 9.

146.995 Reporting of wounds and burn injuries. (1) In this section:

(a) "Crime" has the meaning specified in **s.** 949.01 (1).

(b) "Inpatient health care facility" has the meaning specified in **s.** 50.135 (1).

(2) (a) Any person licensed, certified or registered by the state under ch. 441, 448 or 455 who treats a patient suffering from any of the following shall report in accordance with par.(b): 1. A gunshot wound. 2. Any wound other than a gunshot wound if the person has reasonable cause to believe that the wound occurred as a result of a crime. 3. Second–degree or 3rd–degree burns to at least 5% of the patient's body or, due to the inhalation of superheated air, swelling of the patient's larynx or a burn to the patient's upper respiratory tract, if the person has reasonable cause to believe that the burn occurred as a result of a crime.

(b) For any mandatory report under par.(a), the person shall report the patient's name and the type of wound or burn injury involved as soon as reasonably possible to the local police department or county sheriff's office for the area where the treatment is rendered.

(c) Any such person who intentionally fails to report as required under this subsection may be required to forfeit not more than $500.

(3) Any person reporting in good faith under sub.(2), and any inpatient health care facility that employs the person who reports, are immune from all civil and criminal liability that may result because of the report. In any proceeding, the good faith of any person reporting under this section shall be presumed.

(4) The reporting requirement under sub.(2) does not apply under any of the following circumstances:

(a) The patient is accompanied by a law enforcement officer at the time treatment is rendered.

(b) The patient's name and type of wound or burn injury have been previously reported under sub.(2).

(c) The wound is a gunshot wound and appears to have occurred at least 30 days prior to the time of treatment.

History: 1987 **a. 233;** 1991 **a. 39;** 1993 **a.** 27.

146.997 Health care worker protection. (1) DEFINITIONS. In this section:

(a) "Department" means the department of workforce development.

(b) "Disciplinary action" has the meaning given in s. 230.80 (2).

(c) "Health care facility" means a facility, as defined in **s.** 647.01 (4), or any hospital, nursing home, community–based residential facility, county home, county infirmary, county hospital, county mental health complex or other place licensed or approved by the department of health and family services under **s.** 49.70, 49.71, 49.72, 50.03, 50.35, 51.08 or 51.09 or a facility under **s.** 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) "Health care provider" means any of the following:

1. A nurse licensed under ch. 441.

2. A chiropractor licensed under ch. 446.

3. A dentist licensed under ch. 447. 4. A physician, podiatrist, perfusionist, or physical therapist licensed under ch. 448.

NOTE: Subd. 4 is shown below as affected by 2001 Wis. Acts 70 and 89, eff. 4–1-04. 4. A physician, podiatrist, perfusionist, physical therapist, or physical therapist assistant licensed under ch. 448.

5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.

6. A dietician certified under subch. V of ch. 448.

7. An optometrist licensed under ch. 449.

8. A pharmacist licensed under ch. 450.

9. An acupuncturist certified under ch. 451.

10. A psychologist licensed under ch. 455.

11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

12. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

13. A massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Subd. 13. is shown as amended eff. 3–1–03 by 2001 Wis. Act 74. Prior to 3–1–03 it reads: 13. A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.

14. An emergency medical technician licensed under **s.** 146.50 (5) or a first responder.

15. **A** partnership of any providers specified under subds. 1. to 14.

16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.

17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

18. A hospice licensed under subch. IV of ch. 50 19. A rural medical center, as defined in s. 50.50 (11). 20. A home health agency, as defined in s. 50.49 (1) (a).

(2) REPORTING PROTECTED. (a) Any employee of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard– setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employee of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employee of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard–setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard–setting body that receives a report under par. (a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par. (a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard–setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employee of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par. (a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to **an** alleged violation specified in par. (a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) on that person's behalf.

(c) For purposes of pars. (a) and (b), an employee is not acting in good faith if the employee reports any information under sub. (2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub. (2) (c) based on information that the employee knows or should know is false or misleading or provides any information under sub. (2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Subject to par. (b), any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the department under s. 106.54 (6). If the department finds that a violation of sub. (3) has been committed, the department may take such action under **s.** 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in s. 111.32 ***(6)*** (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the personnel commission under s. 230.45 (1) (L). If the personnel commission finds that a violation of sub. (3) has been committed, the personnel commission may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a) or (b).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub. (3) may be required to forfeit not more than $1,000 for a first violation, not more than $5,000 for a violation committed within 12 months of a previous violation and not more than $10,000 for a violation committed within 12 months of 2 or more previous violations. The 12–month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than $100 for each offense.

History: ***1999*** **a. 176, 186;** 2001 **a.** ***38,*** **70, 74,** ***89,*** **105.**

CHAPTER 252
COMMUNICABLE DISEASES

252.10 Public health dispensaries. (1) A local health department may request from the department certification to establish and maintain a public health dispensary for the diagnosis and treatment of persons suffering from or suspected of having tuberculosis. Two or more local health departments may jointly establish, operate and maintain public health dispensaries. The department shall certify a local health department to establish and maintain a public health dispensary if the local health department meets the standards established by the department by rule. The department of health and family services may withhold, suspend or revoke a certification if the local health department fails to comply with any rules promulgated by the department. The department shall provide the local health department with reasonable notice of the decision to withhold, suspend or revoke certification. The department shall offer the local health department an opportunity to comply with the rules and an opportunity for a fair hearing. Certified local health departments may contract for public health dispensary services. If the provider of those services fails to comply, the department may suspend or revoke the local health department's certification. The department may establish, operate and maintain public health dispensaries and branches in areas of the state where local authorities have not provided public health dispensaries.

(6) (a) The state shall credit or reimburse each dispensary on an annual or quarterly basis for the operation of public health dispensaries established and maintained in accordance with this section and rules promulgated by the department.

(b) The department shall determine by rule the reimbursement rate under par. (a) for services.

(g) The reimbursement by the state under pars. (a) and (b) shall apply only to funds that the department allocates for the reimbursement under the appropriation under s. 20.435 *(5)* (e).

(7) Drugs necessary for the treatment of mycobacterium tuberculosis shall be purchased by the department from the appropriation under s. 20.435 (5) (e) and dispensed to patients through the public health dispensaries, local health departments, physicians or advanced practice nurse prescribers.

(9) Public health dispensaries shall maintain such records as are required by the department to enable them to carry out their responsibilities designated in this section and in rules promulgated by the department. Records may be audited by the department.

(10) All public health dispensaries and branches thereof shall maintain records of costs and receipts which may be audited by the department of health and family services.

History: 1971 c. **81;** 1971 c. 211 s. 124; 1973 c. 90; 1975 c. 39, 198,224; 1975 c. 413 ss. 2, 18; Stats. 1975 s. 149.06; 1977 c. 29; 1981 c. 20 ss. 1446, 2202 (20) (c); 1983 a. 27; 1985 a. 29; 1991 a. 39, 160; 1993 a. 27 ss. 406, 407, 409, 411 to 414; Stats. 1993 s. 252.10, 1993 a. 443; 1995 a. 27 ss. 6318, 9126 *(19),* 9145 (1); 1997 a. 27, 75, 156, 175, 252; 1999 a. 9, 32, 186.

Cross Reference: See **also** ch. HFS 145, Wis. adm. code. .

252.14 Discrimination related to acquired immunodeficiency syndrome. (1) In this section:

(ad) "Correctional officer" has the meaning given in s. 301.28 (1).

(am) "Fire fighter" has the meaning given in **s.** 102.475 **(8)** (b).

(ar) "Health care provider" means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician licensed under subch. II of ch. 448.
4c. **A** perfusionist licensed under subch. II of ch. 448.

NOTE: Subd. 4c. is created eff. 1–1–03 by 2001 Wis. Act 89.

4e. **A** physical therapist licensed under subch. III of ch. 448.

NOTE: Subd. 4e. is amended eff. 4–1–04 by 2001 Wis. Act 70 to read: 4e. A physical therapist or physical therapist assistant licensed under subch. III of ch. 448.

4g. **A** podiatrist licensed under subch. IV of ch. 448.
4m. **A** dietitian certified under subch. V of ch. 448.
4p. ***An*** occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.
4q. ***An*** athletic trainer licensed under subch. VI of ch. 448.
5. An optometrist licensed under ch. 449.
6. A psychologist licensed under ch. 455.
7. **A** social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE: Subd. 7. is shown as amended eff. 11–1–02 by 2001 Wis. Act 80. Prior to 11–1–02 it reads:

7. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

8. **A** speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
9. ***An*** employee or agent of any provider specified under subds. 1. to 8.
10. A partnership of any provider specified under subds. 1. to **8.**
11. **A** corporation of any provider specified under subds. 1. to **8.** that provides health care services.
12. ***An*** operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.
13. An emergency medical technician licensed under **s.** 146.50 (5).
14. A physician assistant licensed under ch. 448. 15. A first responder.

(c) "Home health agency" has the meaning specified in s. 50.49 (1) (a).

(d) "Inpatient health care facility" means a hospital, nursing home, community–based residential facility, county home, county mental health complex or other place licensed or approved by the department under **s.** 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a facility under **s.** 45.365, 48.62, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(2) No health care provider, peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, home health agency, inpatient health care facility or person who has access to a validated test result may do any of the following with respect to an individual who has acquired immunodeficiency syndrome or has a positive test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, solely because the individual has HIV infection or an illness or medical condition that is caused by, arises from or is related to HIV infection:

(a) Refuse to treat the individual, if his or her condition is within the scope of licensure or certification of the health care provider, home health agency or inpatient health care facility.

(am) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, refuse to provide services to the individual.

(b) Provide care to the individual at a standard that is tower than that provided other individuals with like medical needs.

(bm) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, provide services to the individual at a standard that is lower than that provided other individuals with like service needs.

(c) Isolate the individual unless medically necessary.

(d) Subject the individual to indignity, including humiliating, degrading or abusive treatment.

(3) A health care provider, home health agency or inpatient health care facility that tests an individual for HIV infection shall provide counseling about HIV and referral for appropriate health care and support services as necessary. A health care provider, home health agency or inpatient health care facility that treats an individual who has an HIV infection or acquired

immunodeficiency syndrome shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility.

(4) Any person violating Sub. (2) is liable to the patient for actual damages and costs, plus exemplary damages of up to $5,000 for an intentional violation. In determining the amount of exemplary damages, a court shall consider the ability of a health care provider who is an individual to pay exemplary damages.

History: 1989 **a.** 201; 1991 a. 32, 39, 160, 189, 269, 315; 1993 **a.** 27 ss. 326 **to** 331; Stats. 1993 **s.** 252.14; 1993 **a.** 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 21 ss. 6322, 9145 (1); 1997 **a.** 21, 35, 67, 75, 175; 1999 a. 9, 32, 180; 2001 **a.** 70, 80, 89.

252.15 Restrictions on use of a test for HIV.

(1) DEFINITIONS. In this section: (ab) "Affected person" means an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in **s.** 938.02 (15m), a secured child caring institution, as defined in **s.** 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, health care provider, employee of a health care provider or staff member of a state crime laboratory.

(ad) "Correctional officer" has the meaning given in **s.** 301.28 (1).

(af) "Emergency medical technician" has the meaning given in **s.** 146.50 (1) (e).

(aj) "Fire fighter" has the meaning given in **s.** 102.475 (8) (b).

(am) "Health care professionai" means a physician who is licensed under ch. 448 or a registered nurse or licensed practical nurse who is licensed under ch. 441.

(ar) "Health care provider" means any of the following: 1. **A** person or entity that is specified in s. 146.81 (1), but does not include a massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Subd. 1. is shown as amended eff. 3 1 – 0 3 by 2001 Wis. Act 74. Prior to 3 1 – 0 3 it reads: 1. A person or entity that is specified in s. 146.81 (1), but does not include a massage therapist or bodyworker issued a lieense of registration under subch. XI of ch. 440.

2. **A** home health agency.

3. An employee of the Mendota mental health institute or the Winnebago mental health institute.

(cm) "Home health agency" has the meaning given in **s.** 50.49 (1) (a).

(d) ''Informed consent for testing or disclosure" means consent in writing on an informed consent for testing or disclosure form by a person to the administration of a test to him or her for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or to the disclosure to another specified person of the results of a test administered to the person consenting.

(e) "Informed consent for testing or disclosure form" means a printed document on which a person may signify his or her informed consent for testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or authorize the disclosure of any test results obtained.

(eg) "Relative" means a spouse, parent, grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 990.001 (16). This relationship may be by blood, marriage or adoption.

(em) "Significantly exposed means sustained a contact which carries a potential for a transmission of HIV, by one or more of the following:

1. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

2. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

3. Exchange, into an eye, an open wound, an oozing lesion, or where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

6. Other routes of exposure, defined as significant in rules promulgated by the department. The department in promulgating the rules shall consider all potential routes of transmission of HIV identified by the centers for disease control of the federal public health service.

(fm) "Universal precautions" means measures that a health care provider, an employee of a health care provider or other individual takes in accordance with recommendations of the federal centers for disease control for the health care provider, employee or other individual for prevention of HIV transmission in health– care settings.

(2) INFORMED CONSENT FOR TESTING OR DISCLOSURE. (a) No health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV unless the subject of the test first provides informed consent for testing or disclosure as specified under par. (b), except that consent to testing is not required for any of the following:

1. Except as provided in subd. 1g., a health care provider who procures, processes, distributes or uses a human body part or human tissue donated as specified under **s.** 157.06 (6) (a) or (b) shall, without obtaining consent to the testing, test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a **test** for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. If the validated test result of the donor from the test or series of tests performed is positive, the human body part or human tissue donated for use or proposed .for donation may not be used.

1g. If a medical emergency, as determined by the attending physician of a potential donee and including a threat to the preservation of life of the potential donee, exists under which a human body part or human tissue that has been subjected to testing under subd. 1. is unavailable, the requirement of subd. 1. does not apply.

2. The department, a laboratory certified under 42 USC 263a or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining written consent to the testing, subject any body fluids or tissues to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

3. The medical director of a center for the developmentally disabled, as defined in **s.** 51.01 (3), **or** a mental health institute, as defined in **s.** 51.01 (12), may, without obtaining consent to the testing, subject a resident or patient of the center or institute to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV if he or she determines that the conduct of the resident or patient poses a significant risk of transmitting HIV to another resident or patient of the center or institute.

4. A health care provider may subject an individual to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, without obtaining consent to the testing from the individual, if all of the following apply:

a. The individual has been adjudicated incompetent under ch. 880, is under 14 years of age or is unable to give consent because he or she is unable to communicate due to a medical condition.

b. The health care provider obtains consent for the testing from the individual's guardian, if the individual is adjudicated incompetent under ch. 880; from the individual's parent or guardian, if the individual is under 14 years of age; or from the individual's closest living relative or another with whom the individual has a meaningful social and emotional relationship if the individual is not a minor nor adjudicated incompetent.

6. A health care professional acting under an order of the court under subd. 7. or **s.** 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining consent to the testing, subject an individual to a test or a series of tests to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. No sample used for laboratory test purposes under this subdivision may disclose the name of the test subject, and, notwithstanding

Sub. (4) (c), the test results may not be made part of the individual's permanent medical record.

7. a. If all of the conditions under subd. 7. ai. to c. are met, an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in **s.** 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, during the course of providing care or services to an individual; or a peace officer, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, while searching or arresting an individual or while controlling or transferring an individual in custody; or a health care provider or an employee of a health care provider who, during the course of providing care or treatment to an individual or handling or processing specimens of body fluids or tissues of an individual; or a staff member of a state crime laboratory who, during the course of handling or processing specimens of body fluids or tissues of an individual; is significantly exposed to the individual may subject the individual's blood to a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and may receive disclosure of the results.

ai. The affected person uses universal precautions, if any, against significant exposure, and was using universal precautions at the time that he or she was significantly exposed, except in those emergency circumstances in which the time necessary for use of the universal precautions would endanger the life of the individual.

ak. **A** physician, based on information provided to the physician, determines and certifies in writing that the affected person has been significantly exposed. The certification shall accompany the request for testing and disclosure. If the affected person who is significantly exposed is a physician, he or she may not make this determination or certification. The information that is provided to a physician to document the occurrence of a significant exposure and the physician's certification that an affected person has been significantly exposed, under this subd. 7. ak., shall be provided on a report form that **is** developed by the department of commerce under **s.** 101.02 (19) (a) or on a report form that the department of commerce determines, under **s.** 101.02 (19) (b), is substantially equivalent to the report form that is developed under **s.** 101.02 (19) (a).

am. The affected person submits to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, as soon as feasible or within a time period established by the department after consulting guidelines of the centers for disease control of the federal public health service, whichever is earlier.

ap. Except as provided in subd. 7. av. to c., the test is performed on blood that is drawn for a purpose other than testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV.

ar. The individual, if capable of consenting, has been given an opportunity to be tested with his or her consent and has not consented.

at. The individual has been informed that his or her blood may be tested for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV; that the test results may be disclosed to no one, including that individual, without his or her con sent, except to the person who is certified to have been significantly exposed; that, if the person knows the identity of the individual, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed; and that a record may be kept of the test results only if the record does not reveal the individual's identity.

av. If blood that is specified in subd. 7. ap. is unavailable, the person who is certified under subd. 7. ak. to have been significantly exposed may request the district attorney to apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and to disclose the results to that person. The person who is certified under subd. 7. ak. to have been significantly exposed shall accompany the request with the certification under subd. 7. ak.

b. Upon receipt of a request and certification under the requirements of this subdivision, a district attorney shall, as soon as possible so as to enable the court to provide timely notice, apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests as specified in subd. 7. a., administered by a health care professional, and to disclose the results of the test or tests as specified in subd. 7. c.

c. The court shall set a time for a hearing on the matter under subd. 7. a. within 20 days after receipt of a request under subd. 7. b. The court shall give the district attorney and the individual from whom a test is sought notice of the hearing at least 72 hours prior to the hearing. The individual may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the individual has significantly exposed the affected person, the court shall, except as provided in subd. 7. d., order the individual to submit to a test or a series of tests for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. The court shall require the health care professional who performs the test or series of tests to refrain from disclosing the test results to the individual and to disclose the test results to the affected person and his or her health care professional. No sample used for laboratory test purposes under this subd. 7. c. may disclose the name of the test subject.

d. The court is not required to order the individual to submit to a test under subd. 7. c. if the court finds substantial reason relating to the life or health of the individual not to do so and states the reason on the record.

7m. The test results of an individual under subd. 7. may be disclosed only to the individual, if he or she so consents, to anyone authorized by the individual and to the affected person who was certified to have been significantly exposed. **A** record may be retained of the test results only if the record does not reveal the individual's identity. If the affected person knows the identity of the individual whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed.

(am) 1. **A** health care provider who procures, processes, distributes or uses human sperm donated as specified under **s.** 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV **a** test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under **s.** 252.13 **(Ir)** to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. The health care provider shall test the donor initially and, if the initial test result is negative, shall perform a 2nd test on a date that is not less than 180 days from the date of the procurement of the sperm. No person may use the donated sperm until the health care provider has obtained the results of the 2nd test. If any validated test result of the donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV is positive, the sperm donated for use may not be used and, if donated, shall be destroyed.

2. **A** health care provider who procures, processes, distributes or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended.

(b) The health care provider, blood bank, blood center or plasma center that subjects a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under pars. (a) and (am) shall, in instances under those paragraphs in which consent is required, provide the potential test subject with an informed consent form for testing or disclosure that shall contain the following information and on the form shall obtain the potential test subject's signature or may, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead obtain the signature of the health care agent:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed and, if the potential test subject has executed a power of attorney for health care

instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the name of the health care agent.

2. A statement of explanation to the potential test subject that the test results may be disclosed as specified under Sub. *(5)* (a) and either a listing that duplicates the persons or circumstances specified under Sub. *(5)* (a) 2. to 19. or a statement that the listing is available upon request.

3. Spaces specifically designated for the following purposes:

a. The signature of the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), of the health care agent, providing informed consent for the testing and the date on which the consent is signed.

b. The name of a person to whom the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent, authorizes that disclosure of test results be made, if any, the date on which the consent to disclosure is signed, and the time period during which the consent to disclosure is effective.

(bm) The health care provider that subjects a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under par. (a) 3. shall provide the test subject and the test subject's guardian, if the test subject is incompetent under ch. 880, with all of the following information:

1. A statement of explanation concerning the test that was performed, the date of performance of the test and the test results.

2. A statement of explanation that the test results may be disclosed as specified under Sub. *(5)* (a) and either a listing that duplicates the persons or circumstances specified under Sub. *(5)* (a) 2. to 18. or a statement that the listing is available upon request.

(3) WRITTEN CONSENT TO DISCLOSURE. A person who receives a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under Sub. (2) (b) or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose the person's test results to anyone at any time subsequent to providing informed consent for disclosure under Sub. (2) (b) and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

(4) RECORD MAINTENANCE. A health care provider, blood bank, blood center or plasma center that obtains from a person a specimen of body fluids or tissues for the purpose of testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV shall:

(a) Obtain from the subject informed consent for testing or disclosure, as provided under Sub. **(2).**

(b) Maintain a record of the consent received under par. (a).

(c) Maintain a record of the test results obtained. A record that is made under the circumstances described in Sub. (2) (a) 7m. may not reveal the identity of the test subject.

(5) CONFIDENTIALITY OF TEST. (a) An individual who is the subject of a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or the individual's health care agent, if the individual has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), may disclose the results of the individual's test to anyone. A person who is neither the individual nor the individual's health care agent may not, unless he or she is specifically authorized by the individual to do so, disclose the individual's test results except to the following persons or under the following circumstances:

1. To the subject of the test and, if the test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent.

2. To a health care provider who provides care to the test subject, including those instances in which a health care provider provides emergency care to the subject.

3. To an agent or employee of a health care provider under subd. 2. who prepares or stores patient health care records, as defined in s. 146.81 (4), for the purposes of preparation or storage of those records; provides patient care; or handles or processes specimens of body fluids or tissues.

4. To a blood bank, blood center or plasma center that subjects a person to a test under Sub. (2) (a), for any of the following purposes: a. Determining the medical acceptability of blood or plasma secured from the test subject. b. Notifying the test subject of the test results. c. Investigating HIV infections in blood or plasma.

5. To a health care provider who procures, processes, distributes or uses a human body part donated as specified under s. 157.06 (6) (a) or (b), for the purpose of assuring medical acceptability of the gift for the purpose intended.

6. To the state epidemiologist or his or her designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

7. To a funeral director, as defined under s. 445.01 *(5)* or to other persons who prepare the body of a decedent for burial or other disposition or to a person who performs an autopsy or assists in performing an autopsy.

8. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

9. Under a lawful order of a court of record except as provided under s. 901.05.

10. To a person who conducts research, for the purpose of research, if the researcher:

a. Is affiliated with a health care provider under subd. 3.

b. Has obtained permission to perform the research from an institutional review board.

c. Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

11. To a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

12. To a coroner, medical examiner or an appointed assistant to a coroner or medical examiner, if one or more of the following conditions exist:

a. The possible HIV–infected status is relevant to the cause of death of a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant.

b. The coroner, medical examiner or appointed assistant is significantly exposed to a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant, if a physician, based on information provided to the physician, determines and certifies in writing that the coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for disclosure.

13. To a sheriff, jailer or keeper of a prison, jail or house of correction or a person designated with custodial authority by the sheriff, jailer or keeper, for whom disclosure is necessitated in order to permit the assigning of a private cell to a prisoner who has a positive test result.

14. If the test results of a test administered to an individual are positive and the individual is deceased, by the individual's attending physician, to persons, if known to the physician, with whom the individual has had sexual contact or has shared intravenous drug use paraphernalia.

15. To anyone who provides consent for the testing under Sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only during a period in which the test subject is adjudicated incompetent under ch. 880, is under 14 years of age or is unable to communicate due to a medical condition.

17. To an alleged victim or victim, to a health care professional, upon request as specified in s. 938.296 (4) (e) or *(5)* (c) or 968.38 (4) (c) or *(5)* (c), who provides care to the alleged victim or victim and, if the alleged victim or victim is a minor, to the parent or

guardian of the alleged victim or victim, under **s.** 938.296 (4) or (5) or 968.38 (4) or (5).

18. To an affected person, under the requirements of Sub. (2) (a) 7.

19. If the test was administered to a child who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility, as defined in **s.** 938.02 (15m), including a placement under **s.** 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under **s.** 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under **s.** 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under **s.** 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child, or to an agency that placed the child or arranged for the placement of the child in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or arranged for the placement of the child in any of those placements, to the child's foster parent or treatment foster parent or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child is placed, as provided in **s.** 48.371 or 938.371.

NOTE: Subd. 19. *is* shown as affected by *two* acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2)(c).

20. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to the prisoner's patient health care records under s. 302.388, to the medical staff of a jail to whom the results are disclosed under **s.** 302.388 (2) (c) or (d), to the medical staff of a jail to which a prisoner is being transferred, if the results are provided to the medical staff by the department of corrections as part of the prisoner's medical file, to a health care provider to whom the results are disclosed under **s.** 302.388 (2) (c) or (f) or the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under **s.** 302.388 (4).

(b) **A** private pay patient may deny access to disclosure of his or her test results granted under par. (a) 10. if he or she annually submits to the maintainer of his or her test results under Sub. (4) (c) a signed, written request that denial be made.

(5m) AUTOPSIES; TESTING OF CERTAIN CORPSES. Notwithstanding s. 157.05, a corpse may be subjected to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and the test results disclosed to the person who has been significantly exposed under any of the following conditions:

(a) If a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim and the emergency or accident victim subsequently dies prior to testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, and if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the coroner, medical examiner or physician who certifies the victim's cause of death under **s.** 69.18 (2) (b), (c) or (d).

(b) If a funeral director, coroner, medical examiner or appointed assistant to a coroner or medical examiner who prepares the corpse of a decedent for burial or other disposition or a person who performs an autopsy or assists in performing an autopsy is significantly exposed to the corpse, and if a physician, based on information provided to the physician, determines and certifies in writing that the funeral director, coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the attending physician of the funeral director, coroner, medical examiner or appointed assistant who is so exposed.

(c) If a health care provider or an agent or employee of a health care provider is significantly exposed to the corpse or to a patient who dies subsequent to the exposure and prior to testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, and if a physician who is not the health care provider, based on information provided to the physician, determines and certifies in writing that the health care provider, agent or employee has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the physician who certifies that the significant exposure has occurred.

(5r) SALE OF TESTS WITHOUT APPROVAL PROHIBITED. No person may sell or offer to sell in this state a test or test kit to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV for self–use by an individual unless the test or test kit is first approved by the state epidemiologist. In reviewing a test or test kit under this subsection, the state epidemiologist shall consider and weigh the benefits, if any, to the public health of the test or test kit against the risks, if any, to the public health of the test or test kit.

(6) EXPANDED DISCLOSURE OF TEST RESULTS PROHIBITED. No person to whom the results of a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV have been disclosed under Sub. (5) (a) or (5m) may disclose the test results except as authorized under Sub. (5) (a) or (5m).

(7) REPORTING OF POSITIVE TEST RESULTS. (a) Notwithstanding **ss.** 227.01 (13) and 227.10 **(1),** for the purposes of this subsection, the state epidemiologist shall determine, based on the preponderance of available scientific evidence, the procedures necessary in this state to obtain a validated test result and the secretary shall so declare under **s.** 250.04 (1) or (2) (a). The state epidemiologist shall revise this determination if, in his or her opinion, changed available scientific evidence warrants a revision, and the secretary shall declare the revision under s. 250.04 (1) or (2) (a).

(b) If a positive, validated test result is obtained from a test subject, the health care provider, blood bank, blood center or plasma center that maintains a record of the test results under Sub. (4) (c) shall report to the state epidemiologist the following information:

1. The name and address of the health care provider, blood bank, blood center or plasma center reporting.

2. The name and address of the subject's health care provider, if known.

3. The name, address, telephone number, age or date of birth, race and ethnicity, sex and county of residence of the test subject, if known.

4. The date on which the test was performed.

5. The test result.

6. Any other medical or epidemiological information required by the state epidemiologist for the purpose of exercising surveillance, control and prevention of HIV infections.

(c) Except as provided in Sub. (7m), a report made under par. (b) may not include any of the following:

1. Information with respect to the sexual orientation of the test subject.

2. The identity of persons with whom the test subject may have had sexual contact.

(d) This subsection does not apply to the reporting of information under s. 252.05 with respect to persons for whom a diagnosis of acquired immuno-deficiency syndrome has been made.

(7m) REPORTING OF PERSONS SIGNIFICANTLY EXPOSED. If a positive, validated test result is obtained from a test subject, the test subject's physician who maintains a record of the test result under Sub. (4) (c) may report to the state epidemiologist the name of any person known to the physician to have been significantly exposed to the test subject, only after the physician has done all of the following:

(a) Counseled the test subject to inform any person who has been significantly exposed to the test subject.

(b) Notified the test subject that the name of any person known to the physician to have been significantly exposed to the test subject will be reported to the state epidemiologist.

(8) CIVIL LIABILITY. (a) Any person violating Sub. (2), (5) (a), (5m), (6) or (7) (c) is liable to the subject of the test for actual damages, costs and reasonable actual attorney fees, plus exemplary damages of up to $1,000 for a negligent violation and up to $25,000 for an intentional violation.

(b) The plaintiff in an action under par. (a) has the burden of proving by a preponderance of the evidence that a violation occurred under Sub. (2), (5) (a), (5m), (6) or (7) (c). **A** conviction under Sub. (2), (5) (a), (5m), (6) or (7) (c) is not a condition precedent to bringing an action under par. (a).

(9) PENALTIES. Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than $25,000 or imprisoned not more than 9 months or both. Whoever negligently discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m) is subject to a forfeiture of not more than $1,000 for each violation. Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m), knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than $100,000 or imprisoned not more than 3 years and 6 months, or both.

(10) DISCIPLINE OF EMPLOYEES. Any employee of the state or a political subdivision of the state who violates this section may be discharged or suspended without pay.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298,359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332,334,337,340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190,252, 395,491; 1995 a. 27 ss. 6323,9116 (5), 9126 (19); 1995 a. 77,275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74; s. 13.93 (2) (c).

No claim for a violation of Sub. (2) was stated when the defendants neither conducted HIV tests nor were authorized recipients of the test results. Hillman v. Columbia County, 164 Wis. 2d 376,474 N.W.2d 913 (Ct. App. 1991).

This section does not prevent a court acting in equity from ordering an HIV test where this section does not apply. Syring v. Tucker, 174 Wis. 2d 787, 498 N.W.2d 370 (1993).

This section has no bearing on a case in which a letter from the plaintiff to the defendant pharmacy contained a reference to a drug used only to treat AIDS, hut did not disclose the results of an HIV test or directly disclose that the defendant had AIDS. Doe v. American Stores, Co. 74 F. Supp. 2d 855 (1999).

Confidentiality of Medical Records. Meili. Wis. **Law.** Feb. 1995.

CHAPTER 440
DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER **1**
GENERAL PROVISIONS

Cross reference: See also RL, Wis. adm. code

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 480, unless the context requires otherwise:

(a) "Department" means the department of regulation and licensing.

(am) "Financial institution" has the meaning given in s. 705.01 (3).

(b) "Grant" means the substantive act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) "Issue" means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit", when used in reference to limiting a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(dm) "Renewal date" means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential.

(e) "Reprimand" means to publicly warn the holder of a credential.

(f) "Revoke", when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

(g) "Secretary" means the secretary of regulation and licensing.

(h) "Suspend", when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter: (a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "Credentialing" means the acts of an examining board, section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(bm) "Credentialing board" means an examining board or an affiliated credentialing board in the department.

(c) "Examining board" includes the board of nursing.

(cs) "Minority group member" has the meaning given in s. 560.036 (1) (f).

(cv) "Psychotherapy" has the meaning given in s. 457.01 (8m).

(d) "Reciprocal credential" means a credential granted by an examining board, section of an examining board, affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining board, section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 **s.** 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102, 107; 1995 a. 233, 333; 1997 a. 35 s. 448; 1997 a. 237 ss. 532, 539m; 1999 a. 9 s. 2915; 2001 a. 80.

Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who are assigned by the secretary to collect moneys shall be bonded in an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department.

(1) The department may promulgate rules defining uniform procedures to be used by the department, the real estate board, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in s. 560.41 (2), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar credentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.0103 (17), and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached to the department or an examining board under s. 15.405 or 15.406.

(3m) The department may investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(3q) Notwithstanding sub. (3m), the department of regulation and licensing shall investigate any report that it receives under s. 146.40(4r) (am) 2. or (em).

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings.

(5) The department may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(5m) The department shall maintain a toll–free 'telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The department shall publicize the toll– free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible

in the state, including in hospitals, clinics, medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credentialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying for any credential issued or renewed under chs. 440 to 480. All forms shall include a place for the information required under sub.(1lm) (a). Upon request of any person who holds a credential and payment of a $10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, if the holder is not required by statute to do so.

(b) Post a notice in a conspicuous place in the holder's office or place of practice or business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(a) **A** recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) A recommended change to each fee specified under s. 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change to each fee specified under **s.** 440.08 (2) (a) for a credential renewal, to reflect **an** estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under **s.** 20.165 (1) (i) prior to and during that budget period.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under par.(am), to provide his or her social security number:

1. An applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. An applicant for reinstatement of an inactive license under **s.** 452.12 **(6)** (e).

(am) If an applicant specified in par.(a) 1. or 2. is an individual who does not have a social security number, the applicant shall submit a statement made or subscribed under oath that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under **s.** 452.12 (6) (e) if any information required under par.(a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par.(am) is not included with the application form.

(c) The department of regulation and licensing may not disclose a social security number obtained under par.(a) to any person except the coordinated licensure information system under s. 441.50 (7); the department of workforce development for purposes of administering **s.** 49.22; and, for a social security number obtained under par.(a) 1., the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(12m) The department of regulation and licensing shall cooperate with the departments of justice and health and family services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued to any person by the department of regulation and licensing, including whether that credential has been restricted in any way.

(13) The department may conduct an investigation to determine whether an applicant for a credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have an arrest or conviction record. In conducting **an** investigation under this subsection, the department may require an applicant to provide any information that is necessary for the investigation or, for the purpose of obtaining information related to an arrest or conviction record of an applicant, to complete forms provided by the department of justice or the federal bureau of investigation. The department shall charge the applicant any fees, costs or other expenses incurred in conducting the investigation under this subsection.

(14) (a) 1. The department shall grant a certificate of registration as a music therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified. registered or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the fee specified in **s.** 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.1. a.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as an art therapist by the Art Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

b. The organization that certified, registered or accredited the person under subd.2. a. is approved by the department.

c. The person pays the fee specified in **s.** 440.05 (1) and files with the department evidence satisfactory to the department that he or she **is** certified, registered or accredited as required under subd.2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dance therapists.

b. The organization that certified, registered or accredited the person under subd.3. a. is approved by the department.

c. The person pays the fee specified in **s.** 440.05 **(1)** and files with the department evidence satisfactory to the department that

he or she is certified, registered or accredited as required under subd.3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par.(a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par.(a) who pays the fee specified in **s.** 440.05 (1) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) A person who is registered under par.(a) shall notify the department in writing within 30 days if an organization specified in par.(a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par.(a) if such an organization revokes such a certification, registration, or accreditation. If the department revokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par.(am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par.(a) and licenses granted under par.(am) are specified in **s.** 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in **s.** 440.08 (2) (a) and evidence satisfactory to the department that the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a. or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par.(a) is qualified to perform. The rules may not allow a person registered under par.(a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par.(am).

Cross reference: See also chs. RL 140, 141, and 142, Wis. adm. code.

(e) Subject to the rules promulgated under sub.(1), the department may make investigations and conduct hearings to determine whether a violation of this subsection or any rule promulgated under par.(d) has occurred and may reprimand a person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) or may deny, limit, suspend, or revoke a certificate of registration granted under par.(a) or a license granted under the rules promulgated under par.(am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par.(d).

(f) A person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) who violates this subsection or any rule promulgated under par.(d) may be fined not more than $200 or imprisoned for not more than 6 months or both.

(15) The department shall promulgate rules that establish the fees specified in **ss.** 440.05 (10) and 440.08 (2) (d).

(16) Annually, the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under **s.** 118.135.

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31,340; 1991 a. 39; 1993 a. 16, 102, 107,443,445,490,491; 1995 a. 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312, 313, 318; 1997 a. 231, 237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80.

Cross reference: See also RL, Wis. adm. code.

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing board attached to the department or an examining board shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule–making, credentialing and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all persons who are credentialed to be retained by the department and which shall be available for public inspection during the times specified in **s.** 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

History: 1977 c. 418 ss. 25,793,929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1997 a. 27, 191,237.

440.04 Duties of the secretary, The secretary shall: **(1)** Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech–language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech–language pathologists and audiologists under subch. II of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under **s.** 13.172 (2).

(9) Annually prepare and submit a report to the legislature under **s.** 13.172 (2) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 c. 418 s. 26; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. 102, 107; 1995 a. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to carrying out the duties specified in **s.** 440.982 and making investigations, conducting hearings and taking disciplinary action under **s.** 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his

or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16 ss. 3269,3299; 1993 a. 107; 1997 a. 156; 1999 a. 32.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34; 1993 a. 107.

The relationship between the department, cosmetology examining board, and governor is discussed. 70 Atty. Gen. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.05, 444.11, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46:

(1) (a) Initial credential: $53. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) Reciprocal credential, including any credential described in **s.** 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under **s.** 440.08 **(2)** (a) and, if an examination is required, an examination fee under sub.(1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: $10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: $10.

(9) Endorsement of persons who are credentialed to other states: $10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

History: 1977 c. 29, 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 a. 27; 1985 a. 29; 1987 a. 264,265, 329, 399,403; 1989 a. 31,229, 307, 316, 336,340,341,359; 1991 a. 39,269,278,315; 1993 a. 16; 1995 a. 27; 1997 a. 27, 96; 1999 a. 9; 2001 a. 16.

Cross reference: See also ch. RL 4, Wis. adm. code.

440.055 Credit card payments. (2) If the department permits the payment of a fee with use of a credit card, the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub.(3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: 1995 a. 27; 1999 a. 9.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under **s.** 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 4, Wis. adm. code.

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall be based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: 1987 a. 27; 1991 a. 39; 1993 a. 102, 107.

Cross reference: See also ch. RL 4, Wis. adm. code. Department of Regulation and Licensing test scores were subject to disclosure under the open records law. Munroe v. Braatz, 201 Wis. 2d 442,549 N.W.2d 452 (Ct. App. 1996).

440.08 Credential renewal. (1) NOTICE OF RENEWAL. The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential. Notice may be mailed to the last address provided to the department by the credential holder or may be given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub.(3).

(2) RENEWAL DATES, FEES AND APPLICATIONS. (a) Except as provided in par.(b) and in ss. 440.51, 442.04, 444.03, 444.05, 444.11,448.065, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even–numbered year; $59.

3. Accounting corporation or partnership: January 1 of each even–numbered year; $56.

4. Acupuncturist: July 1 of each odd–numbered year; $70.

4m. Advanced practice nurse prescriber: October 1 of each even–numbered year; $73.

5. Aesthetician: July 1 of each odd–numbered year; $87.

6. Aesthetics establishment: July 1 of each odd–numbered year; $70.

7. Aesthetics instructor: July 1 of each odd–numbered year; $70.

8. Aesthetics school: July 1 of each odd–numbered year; $115.

9. Aesthetics specialty school: July 1 of each odd–numbered year; $53.

11. Appraiser, real estate, certified general: January 1 of each even–numbered year; $162.

11m. Appraiser, real estate, certified residential: January 1 of each even–numbered year; $167.

12. Appraiser, real estate, licensed: January 1 of each even–numbered year; $185.

13. Architect: August 1 of each even–numbered year; $60.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even–numbered year; $70.

14f. Athletic trainer: July 1 of each even–numbered year; $53.

14g. Auction company: January 1 of each odd–numbered year; $56.

14r. Auctioneer: January 1 of each odd–numbered year; $174.

15. Audiologist: February 1 of each odd–numbered year; $106.

16. Barbering or cosmetology establishment: July 1 of each odd–numbered year; $56.

17. Barbering or cosmetology instructor: July 1 of each odd–numbered year; $91.
18. Barbering or cosmetology manager: July 1 of each odd–numbered year; $71.
19. Barbering or cosmetology school: July 1 of each odd–numbered year; $138.
20. Barber or cosmetologist: July 1 of each odd–numbered year; $63.
21. Cemetery authority: January 1 of each odd–numbered year; $343.
22. Cemetery preneed seller: January 1 of each odd–numbered year; $61.
23. Cemetery salesperson: January 1 of each odd–numbered year; $90.
23m. Charitable organization: August 1 of each year; $15.
24. Chiropractor: January 1 of each odd–numbered year; $168.
25. Dental hygienist: October 1 of each odd–numbered year; $57.
26. Dentist: October 1 of each odd–numbered year; $131.
26m. Dentist, faculty member: October 1 of each odd–numbered year; $131.
27. Designer of engineering systems: February 1 of each even–numbered year; $58.
27m. Dietitian: November 1 of each even–numbered year; $56.
28. Drug distributor: June 1 of each even–numbered year; $70.
29. Drug manufacturer: June 1 of each even–numbered year; $70.
30. Electrologist: July 1 of each odd–numbered year; $76.
31. Electrology establishment: July 1 of each odd–numbered year; $56.
32. Electrology instructor: July 1 of each odd–numbered year; $86.
33. Electrology school: July 1 of each odd–numbered year; $71.
34. Electrology specialty school: July 1 of each odd–numbered year; $53.
35. Engineer, professional: August 1 of each even–numbered year; $58.
35m. Fund–raising counsel: September 1 of each even–numbered year; $53.
36. Funeral director: January 1 of each even–numbered year; $135.
37. Funeral establishment: June 1 of each odd–numbered year; $56.
38. Hearing instrument specialist: February 1 of each odd–numbered year; $106.
38g. Home inspector: January 1 of each odd–numbered year; $53.
38m. Landscape architect: August 1 of each even–numbered year; $56.
39. Land surveyor: February 1 of each even–numbered year; $77.
42. Manicuring establishment: July 1 of each odd–numbered year; $53.
43. Manicuring instructor: July 1 of each odd–numbered year; $53.
44. Manicuring school: July 1 of each odd–numbered year; $118.
45. Manicuring specialty school: July 1 of each odd–numbered year; $53.
46. Manicurist: July 1 of each odd–numbered year; $133.
46m. Marriage and family therapist: July 1 of each odd–numbered year; $84.
46r. Massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 46r. is created eff. 3–1–03 by 2001 Wis. Act 74.

48. Nurse, licensed practical: May 1 of each odd–numbered year; $69.
49. Nurse, registered: March 1 of each even–numbered year; $66.
50. Nurse–midwife: March 1 of each even–numbered year; $70.
51. Nursing home administrator: July 1 of each even–numbered year; $120.
52. Occupational therapist: November 1 of each odd–numbered year; $59.
53. Occupational therapy assistant: November 1 of each odd–numbered year; $62.
54. Optometrist: January 1 of each even–numbered year; $65.
54m. Perfusionist: November 1 of each odd–numbered year; $56.
55. Pharmacist: June 1 of each even–numbered year; $97.
56. Pharmacy: June 1 of each even–numbered year; $56.
57. Physical therapist: November 1 of each odd–numbered year; $62.
57m. Physical therapist assistant: November 1 of each odd–numbered year; $44.

NOTE: Subd. 57m. is created eff. 4–1–04 by 2001 Wis. Act 70.

58. Physician: November 1 of each odd–numbered year; $106.
59. Physician assistant: November 1 of each odd–numbered year; $72.
60. Podiatrist: November 1 of each odd–numbered year; $150.
61. Private detective: September 1 of each even–numbered year; $101.
62. Private detective agency: September 1 of each even–numbered year; $53.
63. Private practice school psychologist: October 1 of each odd–numbered year; $103.
63g. Private security person: September 1 of each even–numbered year; $53.
63m. Professional counselor: July 1 of each odd–numbered year; $76.
63t. Professional fund–raiser: September 1 of each even–numbered year; $93.
63u. Professional geologist: August 1 of each even–numbered year; $59.
63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even–numbered year; $53.
63w. Professional hydrologist: August 1 of each even–numbered year; $53.
63x. Professional soil scientist: August 1 of each even–numbered year; $53.
64. Psychologist: October 1 of each odd–numbered year; $157.
65. Real estate broker: January 1 of each odd–numbered year; $128.
66. Real estate business entity: January 1 of each odd–numbered year; $56.
67. Real estate salesperson: January 1 of each odd–numbered year; $83.
67m. Registered interior designer: August 1 of each even–numbered year; $56.
67q. Registered massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 67q. is repealed eff. 3–1–03 by 2001 Wis. Act 74.

67v. Registered music, art or dance therapist: October 1 of each odd–numbered year; $53.
67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd–numbered year; $53.
68. Respiratory care practitioner: November 1 of each odd–numbered year; $65.
68d. Social worker: July 1 of each odd–numbered year; $63.
68h. Social worker, advanced practice: July 1 of each odd–numbered year; $70.
68p. Social worker, independent: July 1 of each odd–numbered year; $58.
68t. Social worker, independent clinical: July 1 of each odd–numbered year; $73.
68v. Speech–language pathologist: February 1 of each odd–numbered year; $63.
69. Time–share salesperson: January 1 of each odd–numbered year; $119.
70. Veterinarian: January 1 of each even–numbered year; $105.
71. Veterinary technician: January 1 of each even–numbered year; $58.

(b) The renewal fee for an apprentice, journeyman, student or temporary credential is $10. The renewal dates specified in par.(a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Except as provided in sub.(3), renewal applications shall include the applicable renewal fee specified in pars.(a) and (b).

(d) If an applicant for credential renewal requests that the department process an application on an expedited basis, the

applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL. (a) Except as provided in rules promulgated under par. (b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub. (2) (a) and by payment of a late renewal fee of $25.

(b) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) DENIAL OF CREDENTIAL RENEWAL. (a) ***Generally.*** If the department or the interested examining board or affiliated credentialing board, as appropriate, determines that an applicant for renewal has failed to comply with sub. (2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a Credential is necessary to protect the public health, safety or welfare, the department, examining board or affiliated credentialing board may summarily deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) *Applicability.* This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (b).

History: 1991 a. 39 ss. 3305, 3313; 1991 a. 78, 160, 167, 269, 278, 315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274,275; 1995 a. 27, 233, 321, 322, 461; 1997 a. 27, 35, 81, 96, 156, 191, 237, 261, 300; 1999 a. 9, 32; 2001 a. 16, 70, 74, 80, 89.

440.11 Change of name or address. **(1)** An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last–known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

(3) Any person who fails to comply with sub. (1) shall be subject to a forfeiture of $50.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237.

Cross reference: See also ch. RL 9, Wis. adm code.

440.13 Delinquency *in* support payments; failure to comply with subpoena or warrant. **(1)** In this section:

(b) "Memorandum of understanding" means a memorandum of understanding entered into by the department of regulation and licensing and the department of workforce development under s. 49.857.

(c) "Support" has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit or suspend a credential or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 (6) (e) if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing board, a credentialing board shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential when directed to do so by the department.

History: 1997 a. 191,237.

440.14 Nondisclosure of certain personal information.

(1) In this section: (a) "List" means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(b) "Personal identifier" means a name, social security number, telephone number, street address, post–office box number or 9–digit extended zip code.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(4) The department or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person.

(5) (a) The department or a credentialing board may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4).

(b) Paragraph (a) does not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par. (a) does not apply to a list that the department or the board of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4) may not disclose the personal

identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 a. 88; 2001 a. 66.

440.142 Reporting potential causes *of* public health emergency. (1) A pharmacist or pharmacy shall report to the department of health and family services all of the following:

(a) An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions specified by the department of health and family services by rule under s. 252.02 **(7).**

(b) An unusual increase in the number of prescriptions dispensed that are antibiotic drugs.

(c) The dispensing of a prescription for treatment of a disease that is relatively uncommon or may be associated with bioterrorism, as defined in s. 166.02 (1r).

(2) (a) Except as provided in par. (b), a pharmacist or pharmacy may not report personally identifying information Concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub. (1) (a), (b), or (c).

(b) Upon request by the department of health and family services, a pharmacist or pharmacy shall report to that department personally identifying information other than a social security number concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub. (1) (a), (b), or (c).

History: 2001 a. 109.

440.20 Disciplinary proceedings. (1) Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or board to commence disciplinary proceedings against any holder of a credential.

(3) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department **is** a preponderance of the evidence.

(4) In addition to any grounds for discipline specified in chs. 440 to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 **(2)** or intentionally discloses the results of a blood test in violation of **s.** 252.15 (5) (a) or (5m).

History: 1977 c. 418; 1979 c. 34; 1985 a. 29; 1989 a. 31, 201; 1991 a. 39; 1993 a. 16, 27, 102, 107, 490.

The constitutionality of sub. (3) is upheld. Gandhi v. Medical Examining Board, 168 Wis. 2d 299, 483 N.W.2d 295 (Ct. App. 1992).

A hearing is not required for a complaint filed under this section. 68 Atty. Gen. 30.

The "preponderance of the evidence" burden of proof under sub. (3) does not violate the due process rights of a licensee. 75 Atty. Gen. 76.

440.205 Administrative warnings. If the department or a board, examining board or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentiaiing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining board or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative warning may be reopened and disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. 139.

Cross referenee: See also ch. RL 8, Wis. adm code.

440.21 Enforcement of laws requiring credential. (1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub. (2) may be required to forfeit not more than $10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub. (3) may be fined not less than $25 nor more than $5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 a. 39; 1993 a. 102.

Cross referenee: See also ch. RL 3, Wis. adm. code.

440.22 Assessment of costs. (1) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of **a** reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

(3) In addition to any other discipline imposed, if the department, examining board, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub. (2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub. (2) in the full amount assessed, together with any accrued interest.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

The collection of costs assessed under this section may not he pursued in an independent action for a money judgment. The costs may he collected only as a

condition **of** reinstatement of the disciplined practitioner's credentials. State **v.** Dunn, 213 Wis. 2d 363,570 N.W.2d 614 **(Ct. App.** 1997).

440.23 Cancellation of credential; reinstatement. (1) If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check or debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub.(2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the holder's credential may be canceled on the date determined under sub.(1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

(b) If the fee paid under par.(a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in s. 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(3) Nothing in sub.(1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time to comply with sub.(2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub.(2) (a) to (c) and pays a $30 reinstatement fee.

History: 1989 **a.** 31; 1991 a. 39, 189,269,278,315; 1993 a. 16; 1995 a. 27; 1999 a. 9.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1985 **a.** 340; 1993 a. 107.

CHAPTER 450
PHARMACY EXAMINING BOARD

450.01 Definitions.

In this chapter:

(7) "Dispense" means to deliver a prescribed drug or device to an ultimate user or research subject by or pursuant to the prescription order of a practitioner, including the compounding, packaging or labeling necessary to prepare the prescribed drug or device for delivery.

450.10 Disciplinary proceedings; immunity; orders.

(1) (a) In this subsection, "unprofessional conduct" includes, but is not limited to:

1. Making any materially false statement or giving any materially false information in connection with an application for a license or for renewal or reinstatement of a license.

2. Violating this chapter or, subject to s. 961.38 (4r), ch. 961 or any federal or state statute or rule which substantially relates to the practice of the licensee.

3. Practicing pharmacy while the person's ability to practice is impaired by alcohol or other drugs or physical or mental disability or disease.

4. Engaging in false, misleading or deceptive advertising.

5. Making a substantial misrepresentation in the course of practice which is relied upon by another person.

6. Engaging in conduct in the practice of the licensee which evidences a lack of knowledge or ability to apply professional principles or skills.

7. Obtaining or attempting to obtain compensation by fraud or deceit.

8. Violating any order of the board. (b) Subject to subch. II of ch. 111 and the rules adopted under s. 440.03 (1), the board may reprimand the licensee or deny, revoke, suspend or limit the license or any combination thereof of any person licensed under this chapter who has:

1. Engaged in unprofessional conduct.

2. Been adjudicated mentally incompetent by a court.

3. Been found guilty of an offense the circumstances of which substantially relate to the practice of the licensee.

(2) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license under sub. (1), the board may, for the violations enumerated under sub. (1), assess a forfeiture of not more than $1,000 for each separate offense. Each day of violation constitutes a separate offense.

(3) (a) In this subsection, "health care professional" means any of the following:

1. A pharmacist licensed under this chapter.

2. A nurse licensed under ch. 441.

3. A chiropractor licensed under ch. 446.

4. A dentist licensed under ch. 447.

5. **A** physician, physician assistant, podiatrist, physical therapist, occupational therapist or occupational therapy assistant licensed under ch. 448.

NOTE: Subd. 5. is amended eff. 4–1–04 by 2001 Wis. Act 70 to read: 5. A physician, physician assistant, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448.

5m. **A** dietitian certified under subch. V of ch. 448.

5q. An athletic trainer licensed under subch. VI of ch. 448.

6. An optometrist licensed under ch. 449.

7. An acupuncturist certified under ch. 451.

8. A veterinarian licensed under ch. 453.

9. A psychologist licensed under ch. 455.

10. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE: Subd. 10. is shown as amended eff. 11–1–42 by 2001 Wis. Act 80. Prior to 11–1–02 it reads: 10. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

11. **A** speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(b) Any health care professional who in good faith provides another health care professional with information concerning a violation of this chapter or ch. 961 by any person shall be immune from any civil or criminal liability that results from any act or omission in providing such information. In any administrative or court proceeding, the good faith of the health care professional providing such information shall be presumed.

(4) (a) The secretary may, in case of the need for emergency action, issue general and special orders necessary to prevent or correct actions by any pharmacist under this section that would be cause for suspension or revocation of a license.

(b) Special orders may direct a pharmacist to cease and desist from engaging in particular activities.

History: 1985 **a.** 146; 1987 **a.** 264, 399; 1989 **a.** 31,316; 1991 **a.** 39, 160; 1993 **a.** 222,443; 1995 **a.** 27 s. 9145 (1); 1995 **a.** 448; 1997 **a.** 27, 67, 75, 175; 1999 **a.** 9, 32, 180; 2001 **a.** *70,* 80.

Cross Reference: See also ch. Phar 10, **Wis. adm. code.**

450.11 Prescription drugs and prescription devices.

(1) DISPENSING. No person may dispense any prescribed drug or device except upon the prescription order of a practitioner. All prescription orders shall specify the date of issue, the name and address of the patient, the name and address of the practitioner, the name and quantity of the drug product or device prescribed, directions for the use of the drug product or device and, if the order is written by the practitioner, the signature of the practitioner. Any oral prescription order shall be immediately reduced to writing by the pharmacist and filed according to sub. (2).

(1m) ELECTRONIC TRANSMISSION. Except as provided in s. 453.068 (1) (c) 4., a practitioner may transmit a prescription order electronically only if the patient approves the transmission and the prescription order is transmitted to a pharmacy designated by the patient.

(2) PRESCRIPTION *ORDER* FILE. Every prescription order shall be filed in a suitable book or file and preserved for at least 5 years. Subject to s. 961.38 (2), prescription orders transmitted electronically may be filed a

CHAPTER 455
PSYCHOLOGY EXAMINING BOARD

Cross−reference: See definitions in s. 440.01.

455.01 Definitions. In this chapter:

(2) "Doctoral degree in psychology" means a doctoral degree in a study which involves the application of principles of the practice of psychology. A doctoral degree granted as the result of study involving one or more of the areas of psychological practice recognized by the American psychological association or in any other field recognized by the examining board shall be considered a doctoral degree in psychology.

(3) "Examining board" means the psychology examining board.

(3m) "Fee" means direct or indirect payment or compensation, monetary or otherwise, including the expectation of payment or compensation whether or not actually received.

(4) "Licensed psychologist" means a person holding a valid license under s. 455.04 (1).

(5) "Practice of psychology" means rendering to any person for a fee a psychological service involving the application of principles, methods and procedures of understanding, predicting and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions and interpersonal relationships; the methods and procedures of interviewing, counseling, psychotherapy, psychoanalysis and biofeedback; and the methods and procedures of constructing, administering and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion and motivation. The application of these principles and methods includes, but is not restricted to, all of the following:

(a) Psychological diagnosis, prevention and treatment of problems in behavioral, vocational, educational, emotional, sexual, neuropsychological and mental disorders.

(b) Treatment for alcohol and other substance abuse, disorders of habit and conduct, and the psychological and behavioral aspects of physical illness, accident or other disabilities.

(c) Any other activity authorized by statute or by rules promulgated by the examining board.

(6) "Psychotherapy" means the use of learning, conditioning methods and emotional reactions in a professional relationship to assist persons to modify feelings, attitudes and behaviors which are intellectually, socially or emotionally maladjustive or ineffectual.

(7) (a) A person makes a representation to be a psychologist when the person uses publicly any title or description of services incorporating the words "psychology", "psychological" or "psychologist", and when the person makes a declaration to be trained, experienced or an expert in the field of psychology and offers to engage or engages in the practice of psychology for any person for a fee.

(b) Nothing in this chapter restricts the use of the term "social psychologist" by any person who has been graduated with a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a recognized educational institution, who has passed comprehensive examinations in the field of social psychology as part of the requirements for a doctoral degree or has had equivalent specialized training in social psychology and who has filed with the examining board a statement of the facts demonstrating compliance with this paragraph.

History: 1911c. 192,273,418; 1989 a 243; 1995 a. 188.

455.02 License required to practice; use of titles.

(1m) LICENSE REQUIRED TO PRACTICE. No person may engage in the practice of psychology or the private practice of school psychology, or attempt to do so or make a representation as authorized to do so, without a license issued by the examining board.

(2m) EXCEPTIONS. A license under this chapter is not required for any of the following:

(a) A person lawfully practicing within the scope of a license, permit, registration, certificate or certification granted by this state.

(b) A person providing psychological services as directed, supervised and inspected by a psychologist who has the power to direct, decide and oversee the implementation of the services provided.

(c) The performance of official duties by personnel of any of the armed services or federal health services of the United States.

(d) A person employed in a position as a psychologist or psychological assistant by an accredited college, junior college or university or other academic or research institution, if the person is performing activities that are a part of the duties for which he or she is employed, is performing those activities solely within the confines of or under the jurisdictions of the institution in which he or she is employed and does not render or offer to render psychological services to the public for a fee over and above the salary that he or she receives for the performance of the official duties with the institution with which he or she is employed. An individual acting under this paragraph may, without obtaining a license under s. 455.04 (1) or (4), disseminate research findings and scientific information to others, such as accredited academic institutions or governmental agencies, or may offer lecture services for a fee.

(e) A person pursuing a course of study leading to a graduate degree in medicine, social work, marriage and family therapy or professional counseling at an accredited college or university while working in a training program, if the person's activities and services constitute a part of his or her supervised course of study and the person is designated by a title that clearly indicates the training status appropriate to the person's level of training.

(f) A graduate student or psychological intern in psychology pursuing a course of study leading to a graduate degree in psychology at an accredited college or university while working in a training program, if his or her activities and services constitute a part of the supervised course of study and he or she is designated by a title such as "psychological intern", "psychological trainee" or other title clearly indicating the training status appropriate to his or her level of training. The term "psychological intern" shall be reserved for persons enrolled in the doctoral program in psychology at an accredited college or university or engaged in a formal psychology internship program.

(g) A person certified by the department of public instruction to provide psychological or counseling services, if the person is performing activities that are a part of the duties for which he or she is employed, is performing those activities solely within the confines of or under the jurisdiction of the school district by which he or she is employed and does not render or offer to render psychological services to the public for a fee over and above the salary that he or she receives for the performance of the official duties with the school district by which he or she is employed.

(h) A person who has a doctoral degree in psychology and who has met the examining board's requirements for predoctoral supervised experience under s. Psy 2.09 (2), Wis. adm. code, while employed as a psychology resident by a clinic certified by the department of health and family services.

(i) An ordained member of the clergy of any religious denomination or sect who is associated with a church, synagogue or other religious organization, contributions to which are tax deductible for federal and state income tax purposes, if the member of the clergy is engaged in activities that are within the scope of his or her regular duties as a member of the clergy and that are not rendered to the public for a fee over and above the salary or other compensation that the member of the clergy receives for the performance of his or her official duties as a member of the clergy with the church, synagogue or religious organization with which he or she is associated.

(k) A person engaged in employment counseling or testing for other than therapeutic purposes.

(L) A mental health professional who has met all of the qualifications under s. HSS 61.96, Wis. adm. code, for employment as a mental health professional in an outpatient psychotherapy clinic certified by the department of health and family services under s. HSS 61.95, Wis. adm. code, if the person is performing activities that are a part of the duties for which he or she is employed by such a certified outpatient psychotherapy clinic and is performing those activities solely within the confines of or under the jurisdiction of the clinic by which he or she **is** employed.

(m) A person providing psychological services as an employe of a federal, state or local governmental agency, if the person is providing the psychological services as a part of the duties for which he or she is employed, is providing the psychological services solely within the confines of or under the jurisdiction of the agency by which he or she is employed and does not provide or offer to provide psychological services to the public for a fee over and above the salary that he or she receives for the performance of the official duties with the agency by which he or she is employed.

(n) A person coordinating or participating in the activities of a nonprofit peer support group, if the person performs those activities solely within the confines of the peer support group and does not render or offer to render psychological services to the public for a fee.

(3m) USE OF TITLES. Only an individual licensed under s. 455.04 (1) may use the title "psychologist" or any similar title or state or imply that he or she is licensed to practice psychology, and only an individual licensed under **s.** 455.04 (4) may use the title "private practice school psychologist" or any similar title or state or imply that he or she is licensed to engage in the private practice of school psychology. Only an individual licensed under **s.** 455.04 (1) or (4) may represent himself or herself to the public by any description of services incorporating the word "psychological" or "psychology".

History: 1979 c. 162 ss. 30, 38 (7); 1989 a. 243; 1995 a. 27 ss. 9126 (19), 9145 (1); 1995 a. 188; 1995 a. 225 s. 466; 1997 a. 35, 261.

CHAPTER 457

MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD

Cross–reference: See definitions in s. 440.01.
Cross Reference: See also SFC, Wis. adm. code.

457.01 Definitions. In this chapter:

(1c) "Advanced practice social worker" means an individual who holds an advanced practice social worker certificate granted by the social worker section.

(1g) "Certificate holder" means an individual who is certified under this chapter.

(1n) "Clinical social work" means providing services without supervision for the diagnosis, treatment, and prevention of mental and emotional disorders in individuals, families, and groups, to restore, maintain, and enhance social functioning through treatment interventions that include psychosocial evaluation, counseling of individuals, families, or groups, referral to community resources, advocacy, facilitation of organizational change to meet social needs, and individual, marital, or group psychotherapy.

(1r) "Clinical social worker" means an individual who holds a license to practice clinical social work granted by the social worker section.

(1w) "Credential" means a license or certificate granted under this chapter.

(2) "Examining board" means the marriage and family therapy, professional counseling, and social work examining board.

(2g) "Independent social worker" means an individual who holds an independent social worker certificate granted by the social worker section.

(2r) "Licensee" means a person who is licensed under this chapter.

(3) "Marriage and family therapist" means an individual who holds a license to practice marriage and family therapy granted by the marriage and family therapist section.

(4) "Marriage and family therapist section" means the marriage and family therapist section of the examining board.

(5) "Marriage and family therapy" means applying psychotherapeutic and marital or family systems theories and techniques in the assessment, marital or family diagnosis, prevention, treatment or resolution of a cognitive, affective, behavioral, nervous or mental disorder of an individual, couple or family.

(6) "Professional counseling" means applying a combination of human development, rehabilitation and either psychosocial or psychotherapeutic principles, procedures or services that integrate a wellness, pathology and multicultural model of human behavior in order to assist an individual, couple, family, group of individuals, organization, institution or community to achieve mental, emotional, physical, social, moral, educational, spiritual, vocational or career development and adjustment through the life span of the individual, couple, family, group of individuals, organization, institution or community.

(7) "Professional counselor" means an individual who holds a license to practice professional counseling granted by the professional counselor section.

(8) "Professional counselor section" means the professional counselor section of the examining board.

(8e) "Psychiatrist" means a physician licensed under subch. II of ch. 448 who specializes in psychiatry.

(8m) "Psychotherapy" means the diagnosis and treatment of mental, emotional, or behavioral disorders, conditions, or addictions through the application of methods derived from established psychological or systemic principles for the purpose of assisting people in modifying their behaviors, cognitions, emotions, and other personal characteristics, which may include the purpose of understanding unconscious processes or intrapersonal, interpersonal, or psychosocial dynamics.

(9) "Social work" means applying psychosocial or counseling principles, methods, or procedures in the assessment, evaluation, or psychosocial diagnosis, prevention, treatment, or resolution of a difficulty in the social, psychological, personal, emotional, or mental functioning of an individual, couple, family, group of individuals, or community, including the enhancement or restoration of, or the creation of societal conditions favorable to the enhancement or restoration of, the capacity of an individual, couple, family, group of individuals, or community for social functioning or the delivery of services to a group of individuals or a community to assist the group or community in providing or improving the provision of social or health services to others.

(10) "Social worker" means an individual who holds a social worker certificate granted by the social worker section.

(11) "Social worker section" means the social worker section of the examining board.

History: 1991 a 160; 2001 a 80

457.02 Applicability. This chapter does not do any of the following:

(1) Require any individual to be certified or licensed under this chapter in order to use the title "pastoral counselor," "investment counselor," Vocational counselor," "career counselor," "alcohol and drug counselor," "chemical dependency counselor," or "employee assistance counselor,'' or to engage in such counseling, if the individual does not use any other title or designation that represents or may tend to represent that he or she is certified or licensed under this chapter, and does not represent himself or herself as an individual who engages in social work, advanced practice social work, independent social work, clinical social work, marriage and family therapy, or professional counseling.

(2) Require any individual who is licensed as a school social worker or school counselor by the department of public instruction to be certified or licensed under this chapter in order to use the title "school social worker" or "school counselor."

(3) Require a person who is licensed as a psychologist under ch. 455 or who is a psychiatrist to be licensed under this chapter in order to use the title "marriage and family therapist," "marriage and family counselor," or "professional counselor" if the psychologist or psychiatrist does not use the term "licensed," "certified," or "registered" or any similar term in connection with the title "marriage and family therapist," "marriage and family counselor," or "professional counselor."

(4) Authorize any individual who is certified or licensed under this chapter to use the title "school social worker" or "school counselor" unless the individual is licensed as a school social worker or school counselor by the department of public instruction.

(5) Authorize any individual who is certified or licensed under this chapter to use the title "alcohol and drug counselor" or "chemical dependency counselor" unless the individual is certified as an alcohol and drug counselor or as a chemical dependency counselor through a process recognized by the department of health and family services.

(5m) Authorize any individual who is certified or licensed under this chapter to treat alcohol or substance dependency or abuse as a specialty unless the individual is a substance abuse counselor, as defined in **s.** HFS 75.02 (84), Wis. Adm. Code, or unless the individual satisfies educational and supervised training requirements established in rules promulgated by the examining board. In promulgating rules under this subsection, the examining board shall consider the requirements for qualifying as a substance abuse counselor under s. HFS 75.02 (84), Wis. Adm. Code.

(6) Require a credential for a person to do any of the following:

(a) Lawfully practice within the scope of a license, permit, registration, or certificate granted by this state or the federal government, or granted through a process recognized by the department of health and family services, including practicing psychotherapy under such a license, permit, registration, or certificate.

(b) Practice psychotherapy, if the person satisfies one of the following:

1. The person is registered as a music, art, or dance therapist under s. 440.03 (14) (a) and the person holds a valid license granted by the department under s. 440.03 (14) (am).

2. The person is a mental health professional who meets all of the qualifications under **s. HFS** 61.96, Wis. Adm. Code, for employment as a mental health professional in an outpatient psychotherapy clinic certified by the department of health and family services under s. HFS 61.95, Wis. Adm. Code, if the person's practice of psychotherapy is a part of the duties for which he or she is employed by such a clinic and the person practices psychotherapy solely within the confines of or under the jurisdiction of the clinic.

(c) Provide a consultation or demonstration with an individual licensed under this chapter if the person providing the consultation or demonstration is licensed to practice marriage and family therapy, professional counseling, or clinical social work in another state or territory of the United States.

History: 1991 **a.** 160: 1995 a. 27 ss. 9126 (19), 9145 (1); 1997 a. 27; 2001 a. 80, 105.

457.03 Duties and powers of examining board and sections. The examining board shall do all of the following:

(1) Upon the advice of the social worker section, marriage and family therapist section, and professional counselor section, promulgate rules establishing minimum standards for educational programs that must be completed for certification or licensure under this chapter and for supervised clinical training that must be completed for licensure as a clinical social worker, marriage and family therapist, or professional counselor under this chapter and approve educational programs and supervised clinical training programs in accordance with those standards.

(2) Upon the advice of the social worker section, marriage and family therapist section, and professional counselor section, promulgate rules establishing a code of ethics to govern the professional conduct of certificate holders. The rules shall specify the services included within the practice of social work, advanced practice social work, or independent social work that an individual who is certified under this chapter as a social worker, advanced practice social worker, or independent social worker may perform and the degree of supervision, if any, required to perform those services.

(3) Upon the advice of the social worker section, promulgate rules establishing levels of social work practice for individuals with master's or doctoral degrees in social work, in addition to the levels of practice for which certificates are granted under s. 457.08 (2) and (3), and establishing appropriate educational, training, experience, examination, and continuing education requirements for certification and renewal of a certificate at each level of practice established in rules promulgated under this subsection.

History: 1991 **a.** 160; 2001 a. 80.

Cross Reference: See **also** chs. SFC 1, 3, 6, 7, **13,** and 20, **Wis.** adm. code.

457.033 Psychometric testing. The marriage and family therapy, professional counseling, and social work examining board and the psychology examining board shall jointly promulgate rules that specify the different levels of psychometric testing that an individual who is certified or licensed under this chapter is qualified to perform. Such rules shall be consistent with the guidelines of the American Psychological Association, or other nationally recognized guidelines, for performing psychometric testing. A certificate holder or licensee may not engage in psychometric testing except as provided under the rules promulgated under this section.

History: 2001 **a.** 80.

457.035 Psychotherapy rules. The examining board may not promulgate rules under s. 457.03 that permit an individual to engage in psychotherapy unless one of the following applies:

(1) The individual is licensed under this chapter as a clinical social worker, marriage and family therapist, or professional counselor.

(2) The individual is certified as an advanced practice or independent social worker and the individual engages in psychotherapy only under the supervision of an individual specified in s. 457.08 (4) (c) 1., 2., 3., or 4.

History: 2001 **a.** 80.

457.04 Prohibited practices. Except as provided in **s.** 457.02, no person may do any of the following:

(1) Use the title "social worker" unless the person is certified as a social worker under this chapter.

(2) Use the title "advanced practice social worker" unless the person is certified as an advanced practice social worker under this chapter.

(3) Use the title "independent social worker" unless the person is certified as an independent social worker under this chapter.

(4) Practice clinical social work or designate himself or herself as a clinical social worker or use or assume the title "clinical social worker" or any other title or designation that represents or may tend to represent the person as a clinical social worker unless the person is licensed as a clinical social worker under this chapter or unless the person is certified under this chapter as an advanced practice social worker or independent social worker and the person practices clinical social work under the supervision of a person who is licensed as a clinical social worker under this chapter.

(5) Practice marriage and family therapy or designate himself or herself as a marriage and family therapist or use or assume the title "marriage and family therapist," "marriage and family counselor," or any other title or designation that represents or may tend to represent the person as a marriage and family therapist unless any of the following applies:

(a) The person **is** licensed as a marriage and family therapist under this chapter.

(b) The person is licensed as a clinical social worker under this chapter and initially became certified as an independent clinical

social worker under ch. 457, 1999 stats., on or before May 31, 1995.

(6) Practice professional counseling or designate himself or herself as a professional counselor or use or assume the title "professional counselor," "professional rehabilitation counselor," "vocational rehabilitation counselor," "rehabilitation counselor," or any other title or designation that represents or may tend to represent the person as a professional counselor unless the person is licensed as a professional counselor under this chapter.

(7) Practice psychotherapy unless the person is licensed under this chapter or unless the person is a certificate holder who may practice psychotherapy under the rules promulgated under ss. 457.03 and 457.035.

History: 1991 a. 160; 2001 a. **80.**
Cross Reference: See **also** ch. SFC 20, Wis. adm. code.

457.06 General requirements for certification or licensure. The social worker section, marriage and family therapist section, or professional counselor section may not grant any certificate or license under this chapter unless the applicant does all of the following:

(1) Submits an application for the certificate or license to the department on a form provided by the department.

(2) Pays the fee specified in s. 440.05 (1).

History: 1991 a. **160;** 2001 a. 80.

457.08 Social worker certificates and licenses. (1) SOCIAL WORKER CERTIFICATE. The social worker section shall grant a social worker certificate to an individual who qualifies under s. 457.09 (5) (d) or to any individual who does all of the following:

(a) Satisfies the requirements in s. 457.06.

(b) Submits evidence satisfactory to the social worker section that he or she has received a bachelor's or master's degree in social work from a program accredited by, or a preaccreditation program of, the council on social work education or a doctorate degree in social work.

(c) Passes an examination approved by the social worker section to determine minimum competence to practice as a social worker as specified in the rules promulgated under s. 457.03 *(2)*.

(2) ADVANCED PRACTICE SOCIAL WORKER CERTIFICATE. The social worker section shall grant an advanced practice social worker Certificate to any individual who is certified under sub. (1) and does all of the following:

(a) Satisfies the requirements in s. 457.06.

(b) Submits evidence satisfactory to the social worker section that he or she has received a master's degree in social work from a program accredited by. or a preaccreditation program of, the council on social work education or a doctorate degree in social work.

(c) Passes an examination approved by the social worker section to determine minimum competence to practice as an advanced practice social worker as specified in the rules promulgated under s. 457.03 (2).

(3) INDEPENDENT SOCIAL WORKER CERTIFICATE. The social worker section shall grant an independent social worker certificate to any individual who is certified under sub. (1) and does all of the following:

(a) Satisfies the requirements in s. 457.06.

(b) Submits evidence satisfactory to the social worker section that he or she has received a master's degree in social work from a program accredited by, or a preaccreditation program of, the council on social work education or a doctorate degree in social work.

(c) Submits evidence satisfactory to the social worker section that after receiving a master's or doctorate degree in social work he or she has engaged in the equivalent of at least *2* years of full–time supervised social work practice approved by the social worker section.

(d) Passes an examination approved by the social worker section to determine minimum competence to practice as an independent social worker as specified in the rules promulgated under s. 457.03 (2) or passes the academy of certified social workers examination administered by the National Association of Social Workers.

(4) CLINICAL SOCIAL WORKER LICENSE The social worker section shall grant a clinical social worker license to any individual who is certified under sub. (1) and does all of the following:

(a) Satisfies the requirements in s. 457.06.

(b) Submits evidence satisfactory to the social worker section that he or she has received a master's degree in social work from a program accredited by, or a preaccreditation program of, the council on social work education or a doctorate degree in social work and, as part of the master's or doctorate degree program, had a clinical social work concentration and completed supervised clinical field training.

(c) Submits evidence satisfactory to the social worker section that after receiving a master's or doctorate degree in social work he or she has engaged in the equivalent of at least 3,000 hours of clinical social work practice, including at least 1,000 hours of face–to–face client contact, supervised by one of the following:

1. **An** individual licensed as a clinical social worker who has received a doctorate degree in social work.

2. An individual licensed as a clinical social worker who has engaged in the equivalent of 5 years of full–time clinical social work.

3. **A** psychiatrist or a psychologist licensed under ch. 455.

4. An individual, other than an individual specified in subd. 1., *2.,* or 3., who is approved by the social worker section or satisfies requirements for supervision that are specified in rules promulgated by the examining board upon the advice of the social worker section.

(d) Passes an examination approved by the social worker section to determine minimum competence to practice as a clinical social worker.

History: 1991 a 160; 1995 **a.** 27, 2001 a SO
Cross **Reference:** See also ch. SFC 3, Wis. adm code.

457.09 Social worker training Certificate. (1) The social worker section shall grant a social worker training certificate to any individual who does all of the following:

(a) Submits an application for the certificate to the department on a form provided by the department.

(b) Pays the fee specified in s. 440.05 (6).

(c) Submits evidence satisfactory to the social worker section that he or she has a bachelor's degree from an accredited college or university in psychology, sociology, criminal justice or another human service program approved by the section.

(d) Submits a statement to the social worker section that he or she is seeking to attain social worker degree equivalency under sub. (4) while he or she holds a social worker training certificate.

(2) (a) Notwithstanding s. 457.04 (1), a social worker training certificate authorizes the holder to use the title specified in s. 457.04 (1) during the period in which the certificate is valid.

(b) **A** social worker training certificate holder is a social worker certified under this chapter for purposes of any law governing social workers certified under this chapter.

(3) (a) Except as provided in par. (b), a social worker training certificate is valid for 24 months.

(b) A social worker training certificate shall expire on the date on which the certificate holder receives the results of the examination that he or she has taken under sub. (5) (a) if that date occurs before the end of the period specified in par. (a).

(c) A social worker training certificate may not be renewed.

(4) During the period in which a social worker training certificate is valid, the certificate holder shall do all of the following:

(a) Seek to attain social worker degree equivalency by completing courses relating to all of the following in a social work program or other human services program at an accredited college or university:

1. Social welfare policy and services.

2. Social work practice methods with individuals, families, small groups, communities, organizations and social institutions.

3. Human behavior in the social environment, including human growth and development and social systems theory.

(b) Complete one of the following:

1. A human services internship that involves direct practice with clients and that is supervised by a social worker certified under this chapter who has a bachelor's or master's degree in social work.

2. One year of social work employment that involves direct practice with clients and that is supervised by a social worker certified under this chapter who has a bachelor's or master's degree in social work.

(4m) [a) The social worker section shall determine whether a course, internship or employment satisfies the requirements under sub. (4) and whether a social worker training certificate bolder has attained social worker degree equivalency.

(b) Notwithstanding sub. (4), for the purpose of determining whether a social worker training certificate holder has attained social worker degree equivalency under sub. (4), the section shall apply course work or internships that the certificate holder completed, or employment that the certificate holder held, as part of the program leading to the degree that he or she specified to satisfy the requirement in sub. (1) (c) if the course work, internship or employment satisfies the requirements in sub. (4).

(5) (a) A social worker training certificate holder may take the national social work examination at any time before or after he or she completes the requirements under sub. (4).

(b) If a social worker training certificate holder passes the examination specified under par. (a), he or she shall be permitted to take an examination approved by the social worker section that tests knowledge of state law relating to social work.

(c) If an individual fails an examination specified under par. (a) or (b), he or she may retake the examination. The social worker section may not place any restrictions on the number of times an individual may retake the examinations specified under pars. (a) and (b).

(d) The social worker section shall grant a social worker certificate to an individual who has held a social worker training certificate and who passes the examinations specified under pars. (a) and (b).

History: 1995 a. 27; 2001 a. 80.
Cross Reference: See also **s.** SFC 3.13, **Wis.** adm. code.

457.10 Marriage and family therapist license. The marriage and family therapist section shall grant a marriage and family therapist license to any individual who does all of the following:

(1) Satisfies the requirements in s. 457.06.

(2) Submits evidence satisfactory to the marriage and family therapist section that he or she has done any of the following:

(a) Received a master's or doctorate degree in marriage and family therapy from a program accredited by the commission on accreditation for marriage and family therapy education.

(b) Received a master's or doctorate degree in marriage and family therapy, psychology, sociology, social work, professional counseling or other mental health field that included course work that the marriage and family therapist section determines is substantially equivalent to the course work required for a master's or doctorate degree in marriage and family therapy described under par. (a).

(3) Submits evidence satisfactory to the marriage and family therapist section that after receiving a master's or doctorate degree required under sub. (2) he or she has engaged in the equivalent of at least 3,000 hours of marriage and family therapy practice, including at least 1,000 hours of face–to–face client contact, supervised by one of the following:

(a) An individual licensed as a marriage and family therapist who has received a doctorate degree in marriage and family therapy.

(b) An individual licensed as a marriage and family therapist who has engaged in the equivalent of 5 years of full–time marriage and family therapy practice.

(c) A psychiatrist or a psychologist licensed under ch. 455.

(d) An individual, other than an individual specified in par. (a), (b), or (c), who is approved by the marriage and family thcrapist section or satisfies requirements for supervision that are specified in rules promulgated by the examining board upon the advice of the marriage and family therapist section.

(4) Passes an examination approved by the marriage and family therapist section to determine minimum competence to practice marriage and family therapy.

History: 1991 **a** 160, 2001 a 80
Cross Reference: See also chs SFC 15, 16, and 18, Wis adm. code.

457.11 Marriage and family therapist training certificate. (1) The marriage and family therapist section shall grant a marriage and family therapist training certificate to any individual who does all of the following:

(a) Submits an application for the certificate to the department on a form provided by the department.

(b) Pays the fee specified in s. 440.05 (6).

(c) Satisfies the requirements in s. 457.10 (2).

(d) Submits evidence satisfactory to the marriage and family therapist section that hc or she is employed full–time, or has an offer of full–time employment, as a marriage and family therapist in a supervised marriage and family therapist practice or in a position in which the applicant will, in the opinion of the marriage and family therapist section, receive training and supervision equivalent to the training and supervision received in a full–time supervised marriage and family therapist practice.

(2) A marriage and family therapist training certificate is valid for 24 months or until the date on which the holder of the certificate ceases to be employed in a position specified in sub. (1) (d), whichever occurs first, and may not be renewed by the marriage and family therapist section. A marriage and family therapist training certificate authorizes the holder to use any title specified in s. 457.04 (5) and to practice marriage and family therapy within the scope of his or her training or supervision during the period in which the certificate is valid.

History: 2001 a 80.

457.12 Professional counselor license. The professional counselor section shall grant a professional counselor license to any individual who does all of the following:

(1) Satisfies the requirements in s. 457.06.

(2) Submits evidence satisfactory to the professional counselor section that he or she has received a master's or doctorate degree in professional counseling or its equivalent from a program approved by the professional counselor section.

(3) Submits evidence satisfactory to the professional counselor section that he or she has done any of the following:

(a) After receiving a master's degree in professional counseling or its equivalent, engaged in the equivalent of at least 3,000 hours of professional counseling practice, including at least 1,000 hours of face–to–face client contact, supervised by one of the following:

1. An individual licensed as a professional counselor who has received a doctorate degree in professional counseling.

2. An individual licensed as a professional counselor who has engaged in the equivalent of 5 years of full–time professional counseling practice.

3. A psychiatrist or a psychologist licensed under ch. 455.

4. An individual, other than an individual specified in subd. 1., 2., or 3., who is approved by the professional counselor section or satisfies requirements for supervision that are specified in rules promulgated by the examining board upon the advice of the professional counselor section.

(b) Received a doctorate degree in professional counseling or its equivalent, and, either during or after the doctorate degree program or its equivalent, engaged in the equivalent of at least 1,000 hours of full–time professional counseling practice supervised by one of the following:

1. An individual licensed as a professional counselor who has received a doctorate degree in professional counseling.

2. An individual licensed as a professional counselor who has engaged in the equivalent of 5 years of full–time professional counseling practice.

3. A psychiatrist or a psychologist licensed under ch. 455.

4. An individual, other than an individual specified in subd. 1., 2., or 3., who is approved by the professional counselor section or satisfies requirements for supervision that are specified in rules promulgated by the examining board upon the advice of the professional counselor section.

(4) Passes an examination approved by the professional counselor section to determine minimum competence to practice professional counseling.

History: 1991 a. 160; 1993 a. 366; 2001 a. 80.
Cross Reference: See also chs. SFC 12 and 14 and s. SFC 11.01, Wis. adm. code.

457.13 Professional counselor training certificate. (1) The professional counselor section shall grant a professional counselor training certificate to any individual who does all of the following:

(a) Submits an application for the certificate to the department on a form provided by the department.

(b) Pays the fee specified in s. 440.05 (6).

(c) Satisfies the requirements in s. 457.12 (2).

(d) Submits evidence satisfactory to the professional counselor section that he or she is employed full–time, or has an offer of full–time employment, as a professional counselor in a supervised clinical professional counseling practice or in a position in which the applicant will, in the opinion of the professional counselor section, receive training and supervision equivalent to the training and supervision received in a full–time supervised clinical professional counseling practice.

(2) A professional counselor training certificate is valid for 24 months or until the date on which the holder of the certificate ceases to be employed in a position specified in sub. (1) (d), whichever occurs first, and may not be renewed by the professional counselor section. Notwithstanding s. 457.04 (6), a professional counselor training certificate authorizes the holder to use any title specified in s. 457.04 (6) and to practice professional counseling within the scope of his or her training or supervision during the period in which the certificate is valid.

History: 1993 a. 366; 2001 a. 80.
Cross Referenee: *See* also s. SFC 11.015, Wis. adm. code.

457.14 Temporary certificates. (1) Upon application and payment of the fee specified in s. 440.05 (6), the appropriate section of the examining board may grant a temporary social worker, advanced practice social worker, independent social worker, clinical social worker, marriage and family therapist, or professional counselor certificate or license to any individual who does one of the following:

(a) Satisfies the requirements under s. 457.08 (1) (a) and (b) and has submitted an application to take the next available examination for certification under s. 457.08 (1) (c).

(b) Satisfies the requirements under s. 457.08 (2) (a) and (b) and has submitted an application to take the next available examination for certification under s. 457.08 (2) (c).

(c) Satisfies the requirements under s. 457.08 (3) (a) to (c) and has submitted an application to take the next available examination for certification under s. 457.08 (3) (d).

(d) Satisfies the requirements under s. 457.08 (4) (a) to (c) and has submitted an application to take the next available examination for licensure under s. 457.08 (4) (d).

(e) Satisfies the requirements under s. 457.10 (1) to (3) and has submitted an application to take the next available examination for licensure under s. 457.10 (4).

(f) Satisfies the requirements under s. 457.12 (1) to (3) and has submitted an application to take the next available examination for licensure under s. 457.12 (4).

(2) A temporary certificate granted under sub. (1) is valid for a period designated by the appropriate section of the examining board, not to exceed 9 months, and may be renewed once by that section of the examining board.

History: 1991 a. 160; 2001 a. 80.
Cross Reference: See also ss. SFC 3.11, 11.035, and 17.01, Wis. adm. code.

457.15 Reciprocal certificates and licenses. (1) Upon application and payment of the fee specified in s. 440.05 (2), the social worker section may do all of the following:

(a) Grant a social worker certificate to any individual who holds a similar certificate in another state or territory of the United States and who passes an examination approved by the social worker section that tests knowledge of state law relating to social work, if the social worker section determines that the requirements for obtaining the certificate in the other state or territory are substantially equivalent to the requirements under s. 457.08 (1).

(b) Grant an advanced practice social worker certificate to any individual who holds a similar certificate in another state or territory of the United States and who passes an examination approved by the social worker section that tests knowledge of state law relating to advanced practice social work, if the social worker section determines that the requirements for obtaining the certificate in the other state or territory are substantially equivalent to the requirements under s. 457.08 (2).

(c) Grant an independent social worker certificate to any individual who holds a similar certificate in another state or territory of the United States and who passes an examination approved by the social worker section that tests knowledge of state law relating to independent social work, if the social worker section determines that the requirements for obtaining the certificate in the other state or territory are substantially equivalent to the requirements under s. 457.08 (3).

(d) Grant a clinical social worker license to any individual who holds a similar certificate or license in another state or territory of the United States and who passes an examination approved by the social worker section that tests knowledge of state law relating to clinical social work, if the social worker section determines that the requirements for obtaining the certificate or license in the other state or territory are substantially equivalent to the requirements under s. 457.08 (4).

(2) Upon application and payment of the fee specified in s. 440.05 (2), the marriage and family therapist section may grant a marriage and family therapist license to any individual who holds a similar certificate or license in another state or territory of the United States and who passes an examination approved by the marriage and family therapist section that tests knowledge of state law relating to marriage and family therapy, if the marriage and family therapist section determines that the requirements for obtaining the Certificate or license in the other state or territory are substantially equivalent to the requirements under s. 457.10.

(3) Upon application and payment of the fee specified in s. 440.05 (2), the professional counselor section may grant a professional counselor license to any individual who holds a similar certificate or license in another state or territory of the United States and who passes an examination approved by the professional counselor section that tests knowledge of state law relating to pro-

fessional counseling, if the professional counselor section determines that the requirements for obtaining the certificate or license in the other state or territory are substantially equivalent to the requirements under s. **457.12.**

History: 1991 a. 160; 2001 a. 80.

Cross Reference: See also ss. SFC 3.12, 11.04, **and 17.02, Wis. adm. code.**

The Examining Board **may not require applicants for reciprocal certificates** to **pass an examination covering state law in the absence of a statutory requirement. Applicants for certificates under reciprocal certification must demonstrate that** they **obtained their certificates under a state law that was substantially equivalent to Wisconsin's educational, experience, and examination requirements. OAG** 4–99.

457.16 Examinations. (1) The appropriate section of the examining board shall arrange for examinations for social worker, advanced practice social worker, independent social worker, clinical social worker, marriage and family therapist, and professional counselor certification and licensure to be conducted at least semiannually and at times and places determined by that section of the examining board, and shall provide public notice of each examination at least 90 days before the date of the examination.

(2) Examinations shall consist of written or oral tests, or both, requiring applicants to demonstrate minimum competency in subjects substantially related to the practice of social work, advanced practice social work, independent social work, clinical social work, marriage and family therapy, or professional counseling, as appropriate.

(3) An individual is not eligible for examination unless he or she satisfies the requirements for certification or licensure under s. **457.08 (1)** (a), **(2)** (intro.) and (a), (3) (intro.) and (a) to (c) or **(4)** (intro.) and (a) to (c), **457.10** (1) and **(2),** or **457.12** (1) and **(2)** and, at least 30 days before the date of the examination, submits an application for examination to the department on a form provided by the department and pays the fee specified in **s. 440.05** (1).

History: 1991 a. 160; 2001 a. 80.

Cross Reference: See also chs. SFC 5 **and** 18 and s. **SFC** 11.02, **Wis. adm. code.**

457.20 Issuance of certificate; expiration and renewal. (1) The department shall issue a certificate of certification or licensure to each individual who **is** certified or licensed under this chapter.

(2) The renewal dates for certificates and licenses granted under this chapter, other than training certificates or temporary certificates or licenses, are specified under **s. 440.08 (2)** (a).

(3) Renewal applications shall be submitted to the department on a form provided by the department and shall be accompanied by all of the following:

(a) The renewal fee specified in s. **440.08** (2) (a).

(b) Proof of completion of continuing education requirements in s. **457.22.**

(c) If the application is for renewal of a professional counselor license that was originally granted as a professional counselor certificate under 1991 Wisconsin Act **160,** section 21 **(2)** (g), evidence satisfactory to the professional counselor section that the applicant continues to be employed by a federal, state, or local governmental agency as a professional counselor, professional rehabilitation counselor, vocational rehabilitation counselor, or rehabilitation counselor.

(4) Renewal of an advanced practice social worker, independent social worker, or clinical social worker certificate or license automatically renews the individual's social worker certificate without payment of the renewal fee for the social worker certificate or completion of the continuing education requirements that would otherwise be required for renewal of a social worker certificate.

History: 1991 a. 160; 1993 a. 366; 2001 a. 80.

457.22 Continuing education. (1) The examining board may do any of the following:

(a) Upon the advice of the social worker section, promulgate rules establishing requirements and procedures for social workers, advanced practice social workers, independent social workers, and clinical social workers to complete continuing education programs or courses of study in order to qualify for renewal.

(b) Upon the advice of the marriage and family therapist section, promulgate rules establishing requirements and procedures for marriage and family therapists to complete continuing education programs or courses of study in order to qualify for renewal.

(c) Upon the advice of the professional counselor section, promulgate rules establishing requirements and procedures for professional counselors to complete continuing education programs or courses of study in order to qualify for renewal.

(2) The rules promulgated under sub. **(1)** may not require an individual to complete more than 30 hours of continuing education programs or courses of study in order to qualify for rcncwal. The appropriate section of the examining board may waive all or part of the requirements established in rules promulgated under this section if it determines that prolonged illness, disability, or other exceptional circumstances have prevented the individual from completing the requirements.

History: 1991 a. 160, 2001 a 80.

Cross Reference: See also ch SFC 8, Wis. adm code.

457.24 Professional liability insurance. (1) Except as provided in sub. **(2),** a person licensed as a clinical social worker, marriage and family therapist, or professional counselor under this chapter may not practice clinical social work, marriage and family therapy, or professional counseling unless he or she has in effect professional liability insurance. The examining board shall promulgate rules establishing the minimum amount of insurance required under this subsection.

(2) Subsection (1) does not apply to a person practicing clinical social work, marriage and family therapy, or professional counseling as an employee of a federal, state. or local governmental agency, if the practice is part of the duties for which he or she is employed and is solely within the confines of or under the jurisdiction of the agency by which he or she is employed.

History: 2001 a 80.

457.25 Reporting requirements. (1) Any public or private mental health or health care agency, institution or facility, or any other person or entity that employs or contracts for services with a credential holder, that terminates, suspends, or restricts the employment or contract of the credential holder as **a** result of adverse or disciplinary action against the credential holder relating to his or her practice of social work, advanced practice social work, independent social work, clinical social work, marriage and family therapy, or professional counseling shall submit a written report of the action to the appropriate section of the examining board within 30 days after the date on which the action is taken or, if grounds for such an action exist and the credential holder terminates his or her employment before the action **is** taken, within 30 days after the date on which the credential holder terminates his or her employment.

(2) Any state or local professional society or organization of social workers, marriage and family therapists, or professional counselors that terminates, revokes, or suspends the membership of a credential holder, or takes any other adverse or disciplinary action against a credential holder relating to his or her practice of social work, advanced practice social work, independent social work, clinical social work, marriage and family therapy. or professional counseling, shall submit a written report of the action to the appropriate section of the examining board within 30 days after the date on which the action is taken or, if grounds for such an action exist and the credential holder terminates his or her membership before the action is taken, within 30 days after the date on which the credential holder terminates his or her membership.

(3) Any insurer, as defined in **s.** 600.03 **(27),** who provides professional liability insurance coverage for a credential holder and who pays a claim for damages arising out of the rendering of services by the credential holder or obtains any information that tends to substantiate a charge that the credential holder has engaged in conduct that constitutes grounds for discipline under

s. 457.26 shall submit a written report of the payment or information to the appropriate section of the examining board within 30 days after the date on which the payment is made or information is obtained.

(4) Any circuit court that appoints a guardian of the person or estate of a credential holder or makes a judgment or other determination that a credential holder is mentally ill or mentally incompetent or that a credential holder has done any of the acts enumerated in s. 457.26 (2) shall submit a written report of the appointment, judgment, or determination to the appropriate section of the examining board within 30 days after the date on which the appointment, judgment, or determination is made.

(5) (a) Within 30 days after receipt of a report under **sub.** (1). (2), (3), or (4), the appropriate section of the examining board shall notify the crcdcntial holder, in writing, of the substance of the report. The credential holder and his or her authorized representative may examine the report and may place into the record a statement, of reasonable length, of the credential holder's view of the correctness or relevance of any information in the report. The credential bolder may institute an action in circuit court to amend or expunge any part of his or her record related to the report.

(b) If the appropriate section of the examining board determines that a report submitted under sub. (1), (2), (3), or (4) is without merit or that the credential holder has sufficiently improved his or her conduct, that section of the examining board shall remove the report from his or her record. If no report about a credential holder is filed under sub. (1), (2), (3), or (4) for 2 consecutive years, the credential holder may petition the appropriate section of the examining board to remove any prior reports, which did not result in disciplinary action, from his or her record.

History: 1991 a 160, 2001 a 80.

457.26 Disciplinary proceedings and actions. (1) Subject to the rules promulgated under **s.** 440.03 (1), the appropriate section of the examining board may make investigations and conduct hearings to determine whether a violation of this chapter or any rule promulgated under this chapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the appropriate section of the examining board may reprimand a credential holder or deny, limit, suspend, or revoke a Credential under this chapter if it finds that the applicant credential holder has done any of the following:

(a) Made a material misstatement in an application for a credential or for renewal of a crcdential.

(b) Subject toss. 111.321, 111.322, and 111.335, been convicted of an offense the circumstances of which substantially relate to the practice of social work, advanced practice social work, independent social work, clinical social work, marriage and family therapy, or professional counseling.

(c) Advertised in a manner that **is** false, deceptive or misleading.

(d) Advertised, practiced or attempted to practice under another's name.

(e) Subject to ss. 111.321, 111.322, and 111.34, practiced social work, advanced practice social work, independent social work, clinical social work, marriage and family therapy, or professional counseling while his or her ability to practice was impaired by alcohol or other drugs.

(f) Engaged in unprofessional or unethical conduct in violation of the code of ethics established in the rules promulgated under s. 457.03 (2).

(g) Performed social work, advanced practice social work, or independent social work services in violation of the rules promulgated under s. 457.03 (2) or otherwise engaged in conduct while practicing social work, advanced practice social work, independent social work, clinical social work, marriage and family therapy, or professional counseling which evidences a lack of knowledge or ability to apply professional principles or skills.

(gm) Violated the requirements of **s.** 253.10 (3) (c) 2., 3., 4., 5., 6. or 7.

(h) Violated this chapter or any rule promulgated under this chapter.

History: 1991 a. 160; 1995 **a** 309, 2001 a 80

457.28 Injunctive relief. If the appropriate section of the examining board has reason to believe that any person is violating s. 457.04, the appropriate section of the examining board, the examining board, the department, the attorney general or the district attorney of the proper county may investigate and may, in addition to any other remedics, bring an action in the name and on behalf of this state to enjoin the person from the violation.

History: 1991 a. I60

CHAPTER 632
INSURANCE CONTRACTS IN SPECIFIC LINES

SUBCHAPTER VI
DISABILITY INSURANCE

632.895 Mandatory coverage.

(1) DEFINITIONS. In this section: (a) "Disability insurance policy" means surgical, medical, hospital, major medical or other health service coverage but does not include hospital indemnity policies or ancillary coverages such as income continuation, loss of time or accident benefits.

(b) "Home care" means care and treatment of an insured under a plan of care established, approved in writing and reviewed at least every 2 months by the attending physician, unless the attending physician determines that a longer interval between reviews is sufficient, and consisting of one or more of the following:

1. Part–time or intermittent home nursing care by or under the supervision of a registered nurse.

2. Part–time or intermittent home health aide services which are medically necessary as part of the home care plan, under the supervision of a registered nurse or medical social worker, which consist solely of caring for the patient.

3. Physical or occupational therapy or speech–language pathology or respiratory care.

4. Medical supplies, drugs and medications prescribed by a physician and laboratory services by or on behalf of a hospital, if necessary under the home care plan, to the extent such items would be covered under the policy if the insured had been hospitalized.

5. Nutrition counseling provided by or under the supervision of one of the following, where such services are medically necessary as part of the home care plan:

a. **A** registered dietitian.

b. **A** dietitian certified under subch. V of ch. 448, if the nutrition counseling is provided on or after July 1, 1995.

6. The evaluation of the need for and development of a plan, by a registered nurse, physician extender or medical social worker, for home care when approved or requested by the attending physician.

(c) "Hospital indemnity policies" means policies which provide benefits in a stated amount for confinement in a hospital, regardless of the hospital expenses actually incurred by the insured, due to such confinement.

(d) "Immediate family" means the spouse, children, parents, grandparents, brothers and sisters of the insured and their spouses.

(2) HOME CARE. (a) Every disability insurance policy which provides coverage of expenses incurred for inpatient hospital care shall provide coverage for the usual and customary fees for home care. Such coverage shall be subject to the same deductible and coinsurance provisions of the policy as other covered services. The maximum weekly benefit for such coverage need not exceed the usual and customary weekly cost for care in a skilled nursing facility. If an insurer provides disability insurance, or if 2 or more insurers jointly provide disability insurance, to an insured under 2 or more policies, home care coverage is required under only one of the policies.

(b) Home care shall not be reimbursed unless the attending physician certifies that:

1. Hospitalization or confinement in a skilled nursing facility would otherwise be required if home care was not provided.

2. Necessary care and treatment are not available from members of the insured's immediate family or other persons residing with the insured without causing undue hardship.

3. The home care services shall be provided or coordinated by a state–licensed or medicare-certified home health agency or certified rehabilitation agency.

(c) If the insured was hospitalized immediately prior to the commencement of home care, the home care plan shall also be initially approved by the physician who was the primary provider of services during the hospitalization.

(d) Each visit by a person providing services under a home care plan or evaluating the need for or developing a plan shall be considered as one home care visit. The policy may contain a limit on the number of home care visits, but not less than 40 visits in any 12–month period, for each person covered under the policy. Up to 4 consecutive hours in a 24–hour period of home health aide service shall be considered as one home care visit.

(e) Every disability insurance policy which purports to provide coverage supplementing parts **A** and B of Title XVIII of the social security act shall make available and if requested by the insured provide coverage of supplemental home care visits beyond those provided by parts **A** and B, sufficient to produce an aggregate coverage of 365 home care visits per policy year.

(f) This subsection does not require coverage for any services provided by members of the insured's immediate family or any other person residing with the insured.

(g) Insurers reviewing the certified statements of physicians as to the appropriateness and medical necessity of the services certified by the physician under this subsection may apply the same review criteria and standards which are utilized by the insurer for all other business.

Cross Reference: See also s. Ins 3.54, Wis. adm. Code

(3) SKILLED NURSING CARE. Every disability insurance policy filed after November 29, 1979, which provides coverage for hospital care shall provide coverage for at least 30 days for skilled nursing care to patients who enter a licensed skilled nursing care facility. **A** disability insurance policy, other than a medicare supplement policy or medicare replacement policy, may limit coverage under this subsection to patients who enter a licensed skilled nursing care facility within 24 hours after discharge from a general hospital. The daily rate payable under this subsection to a licensed skilled nursing care facility shall be no less than the maximum daily rate established for skilled nursing care in that facility by the department of health and family services for purposes of reimbursement under the medical assistance program under subch. IV of ch. 49. The coverage under this subsection shall apply only to skilled nursing care which is certified as medically necessary by the attending physician and is recertified as medically necessary every 7 days. If the disability insurance policy is other than a medicare supplement policy or medicare replacement policy, coverage under this subsection shall apply only to the continued treatment for the same medical or surgical condition for which the insured had been treated at the hospital prior to entry into the skilled nursing care facility. Coverage under any disability insurance policy governed by this subsection may be subject to a deductible that applies to the hospital care coverage provided by the policy. The coverage under this subsection shall not apply to care which is essentially domiciliary or custodial, or to care which is available to the insured without charge or under a governmental health care program, other than a program provided under ch. 49.

(4) KIDNEY DISEASE TREATMENT. (a) Every disability insurance policy which provides hospital treatment coverage on **an** expense incurred basis shall provide coverage for hospital inpatient and outpatient kidney disease treatment, which may be limited to dialysis, transplantation and donor–related services, in **an** amount not less than $30,000 annually, as defined by the department of health and family services under par. (d).

(b) No insurer is required to duplicate coverage available under the federal medicare program, nor duplicate any other insurance coverage the insured may have. Other insurance coverage does not include public assistance under ch. 49.

(c) Coverage under this subsection may not be subject to exclusions or limitations, including deductibles and coinsurance factors, which are not generally applicable to other conditions covered under the policy.

(d) The department of health and family services may by rule impose reasonable standards for the treatment of kidney diseases required to be covered under this subsection, which shall not be inconsistent with or less stringent than applicable federal standards.

(5) COVERAGE OF NEWBORN INFANTS. (a) Every disability insurance policy shall provide coverage for a newly born child of the insured from the moment of birth.

(b) Coverage for newly born children required under this subsection shall consider congenital defects and birth abnormalities as an injury or sickness under the policy and shall cover functional repair or restoration of any body part when necessary to achieve normal body functioning, but shall not cover cosmetic surgery performed only to improve appearance.

(c) If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy may require that notification of the birth of a child and payment of the required premium or fees shall be furnished to the insurer within 60 days after the date of birth. The insurer may refuse to continue coverage beyond the 60–day period if such notification is not received, unless within one year after the birth of the child the insured makes all past-due payments and in addition pays interest on such payments at the rate of 5 1/2% per year.

(d) If payment of a specific premium or subscription fee is not required to provide coverage for a child, the policy or contract may request notification of the birth of a child but may not deny or refuse to continue coverage if such notification is not furnished.

(e) This subsection applies to all policies issued or renewed after May 5, 1976, and to all policies in existence on June 1, 1976. All policies issued or renewed after June 1, 1976, shall be amended to comply with the requirements of this subsection.

Cross Reference: See also s. Ins 3.38, Wis. adm. code.

(5m) COVERAGE OF GRANDCHILDREN. Every disability insurance policy issued or renewed on or after May 7, 1986, that provides coverage for any child of the insured shall provide the same coverage for all children of that child until that child is 18 years of age.

(6) EQUIPMENT AND SUPPLIES FOR TREATMENT OF DIABETES. Every disability insurance policy which provides coverage of expenses incurred for treatment of diabetes shall provide coverage for expenses incurred by the installation and use of an insulin infusion pump, coverage for all other equipment and supplies, including insulin, used in the treatment of diabetes and coverage of diabetic self–management education programs. Coverage required under this subsection shall be subject to the same deductible and coinsurance provisions of the policy as other covered expenses, except that insulin infusion pump coverage may be limited to the purchase of one pump per year and the insurer may require the insured to use a pump for 30 days before purchase.

(7) MATERNITY COVERAGE. Every group disability insurance policy which provides maternity coverage shall provide maternity coverage for all persons covered under the policy. Coverage required under this subsection may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy.

(8) COVERAGE OF MAMMOGRAMS. (a) In this subsection:

1. "Direction" means verbal or written instructions, standing orders or protocols.

2. "Low-dose mammography" means the X–ray examination of a breast using equipment dedicated specifically for mammography, including the X–ray tube, filter, compression device, screens, films and cassettes, with an average radiation exposure delivery of less than one rad mid–breast, with 2 views for each breast.

3. "Nurse practitioner" means an individual who is licensed as a registered nurse under ch. 441 or the laws of another state and who satisfies any of the following:

a. Is certified as a primary care nurse practitioner or clinical nurse specialist by the American nurses' association or by the national board of pediatric nurse practitioners and associates.

am. Holds a master's degree in nursing from an accredited school of nursing.

b. Before March 31, 1990, has successfully completed a formal one–year academic program that prepares registered nurses to perform an expanded role in the delivery of primary care, includes at least 4 months of classroom instruction and a component of supervised clinical practice, and awards a degree, diploma or certificate to individuals who successfully complete the program.

c. Has successfully completed a formal education program that is intended to prepare registered nurses to perform an expanded role in the delivery of primary care but that does not meet the requirements of subd. 3. b., and has performed an expanded role in the delivery of primary care for a total of 12 months during the 18–month period immediately before July 1, 1978.

(b) 1. Except as provided in subd. 2. and par. (f), every disability insurance policy that provides coverage for a woman age 45 to 49 shall provide coverage for that woman of 2 examinations by low–dose mammography performed when the woman is age 45 to 49, if all of the following are satisfied:

a. Each examination by low-dose mammography is performed at the direction of a licensed physician or a nurse practitioner, except as provided in par. (e).

b. The woman has not had an examination by low-dose mammography within 2 years before each examination is performed.

2. A disability insurance policy need not provide coverage under subd. 1. to the extent that the woman had obtained one or more examinations by low-dose mammography while between the ages of 45 and 49 and before obtaining coverage under the disability insurance policy.

(c) Except as provided in par. (f), every disability insurance policy that provides coverage for a woman age 50 or older shall provide coverage for that woman of an annual examination by low-dose mammography to screen for the presence of breast cancer, if the examination is performed at the direction of a licensed physician or a nurse practitioner or if par. (e) applies.

(d) Coverage is required under this subsection despite whether the woman shows any symptoms of breast cancer. Except as provided in pars. (b), (c) and (e), coverage under this subsection may only be subject to exclusions and limitations, including deductibles, copayments and restrictions on excessive charges, that are applied to other radiological examinations covered under the disability insurance policy.

(e) A disability insurance policy shall cover an examination by low-dose mammography that is not performed at the direction of a licensed physician or a nurse practitioner but that is otherwise required to be covered under par. (b) or (c), if all of the following are satisfied:

1. The woman does not have an assigned or regular physician or nurse practitioner when the examination is performed.

2. The woman designates a physician to receive the results of the examination.

3. Any examination by low-dose mammography previously obtained by the woman was at the direction of a licensed physician or a nurse practitioner.

(f) This subsection does not apply to any of the following:

1. A disability insurance policy that only provides coverage of certain specified diseases.

2. A health care plan offered by a limited service health organization, as defined in s. 609.01 (3).

3. A medicare replacement policy, a medicare supplement policy or a long–term care insurance policy.

(9) DRUGS FOR TREATMENT OF HIV INFECTION. (a) In this subsection, "HIV infection" means the pathological state produced by a human body in response to the presence of HIV, as defined in s. 631.90 (1).

(b) Except as provided in par. (d), every disability insurance policy that is issued or renewed on or after April 28, 1990, and that provides coverage of prescription medication shall provide coverage for each drug that satisfies all of the following:

1. Is prescribed by the insured's physician for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection.

2. Is approved by the federal food and drug administration for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection, including each investigational new drug that is approved under 21 CFR 312.34 to 312.36 for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection and that is in, or has completed, a phase 3 clinical investigation performed in accordance with 21 CFR 312.20 to 312.33.

3. If the drug is an investigational new drug described in subd. 2., is prescribed and administered in accordance with the treatment protocol approved for the investigational new drug under 21 CFR 312.34 to 312.36.

(c) Coverage of a drug under par. (b) may be subject to any copayments and deductibles that the disability insurance policy applies generally to other prescription medication covered by the disability insurance policy.

(d) This subsection does not apply to any of the following:

1. **A** disability insurance policy that covers only certain specified diseases.

2. **A** health care plan offered by a limited service health organization, as defined in s. 609.01 (3).

3. **A** medicare replacement policy or a medicare supplement policy.

(10) LEAD POISONING SCREENING. (a) Except as provided in par. (b), every disability insurance policy and every health care benefits plan provided on a self–insured basis by a county board under s. 59.52 (11), by a city or village under s. 66.0137 (4), by a political subdivision under s. 66.0137 (4m), by a town under s. 60.23 (25), or by a school district under s. 120.13 **(2)** shall provide coverage for blood lead tests for children under 6 years of age, which shall be conducted in accordance with any recommended lead screening methods and intervals contained in any rules promulgated by the department of health and family services under s. 254.158.

(b) This subsection does not apply to any of the following:

1. **A** disability insurance policy that covers only certain specified diseases.

2. **A** health care plan offered by a limited service health organization, as defined in s. 609.01 (3).

3. **A** long–term care insurance policy, as defined in s. 600.03 (28g).

4. **A** medicare replacement policy, as defined in s. 600.03 (28p).

5. **A** medicare supplement policy, as defined in s. 600.03 (28r).

(11) TREATMENT FOR THE CORRECTION OF TEMPOROMANDIBULAR DISORDERS. (a) Except as provided in par. (e), every disability insurance policy, and every self–insured health plan of the state or a county, city, village, town or school district, that provides coverage of any diagnostic or surgical procedure involving a bone, joint, muscle or tissue shall provide coverage for diagnostic procedures and medically necessary surgical or nonsurgical treatment for the correction of temporomandibular disorders if all of the following apply:

1. The condition is caused by congenital, developmental or acquired deformity, disease or injury.

2. Under the accepted standards of the profession of the health care provider rendering the service, the procedure or device is reasonable and appropriate for the diagnosis or treatment of the condition.

3. The purpose of the procedure or device is to control or eliminate infection, pain, disease or dysfunction.

(b) 1. The coverage required under this subsection for nonsurgical treatment includes coverage for prescribed intraoral splint therapy devices.

2. The coverage required under this subsection does not include coverage for cosmetic or elective orthodontic care, periodontic care or general dental care.

(c) 1. The coverage required under this subsection may be subject to any limitations, exclusions or cost–sharing provisions that apply generally under the disability insurance policy or self–insured health plan.

2. Notwithstanding subd. 1., the coverage required under this subsection for diagnostic procedures and medically necessary nonsurgical treatment for the correction of temporomandibular disorders may not exceed $1,250 annually.

(d) Notwithstanding par. (c) 1., an insurer or a self–insured health plan of the state or a county, city, village, town or school district may require that an insured obtain prior authorization for any medically necessary surgical or nonsurgical treatment for the correction of temporomandibular disorders.

(e) This subsection does not apply to any of the following:

1. **A** disability insurance policy that covers only dental care.

2. **A** medicare supplement policy, as defined in s. 600.03 (28r).

(12) HOSPITAL AND AMBULATORY SURGERY CENTER CHARGES AND ANESTHETICS FOR DENTAL CARE. (a) In this subsection, "ambulatory surgery center" has the meaning given in 42 **CFR** 416.2.

(b) Except as provided in par. (d), every disability insurance policy, and every self–insured health plan of the state or a county, city, village, town or school district, shall cover hospital or ambulatory surgery center charges incurred, and anesthetics provided, in conjunction with dental care that is provided to a covered individual in a hospital or ambulatory surgery center, if any of the following applies:

1. The individual is a child under the age of 5.

2. The individual has a chronic disability that meets all of the conditions under s. 230.04 (9r) (a) 2. a., b. and c.

3. The individual has a medical condition that requires hospitalization or general anesthesia for dental care.

(c) The coverage required under this subsection may be subject to any limitations, exclusions or cost–sharing provisions that apply generally under the disability insurance policy or self–insured plan.

(d) This subsection does not apply to a disability insurance policy that covers only dental care.

(13) BREAST RECONSTRUCTION. (a) Every disability insurance policy, and every self–insured health plan of the state or a county, city, village, town or school district, that provides coverage of the surgical procedure known as a mastectomy shall provide coverage of breast reconstruction of the affected tissue incident to a mastectomy.

(b) The coverage required under par. (a) may be subject to any limitations, exclusions or cost–sharing provisions that apply generally under the disability insurance policy or self–insured health plan.

(14) COVERAGE OF IMMUNIZATIONS. (a) In this subsection: 1. "Appropriate and necessary immunizations" means the administration of vaccine that meets the standards approved by the U.S. public health service for such biological products against at least all of the following:

a. Diphtheria.
b. Pertussis.
c. Tetanus.
d. Polio.
e. Measles.
f. Mumps.
g. Rubella.
h. Hemophilus influenza **B**.
i. Hepatitis **B.**
j. Varicella.

2. "Dependent" means a spouse, an unmarried child under the age of 19 years, an unmarried child who is a full–time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

(b) Except as provided in par. (d), every disability insurance policy, and every self–insured health plan of the state or a county, city, town, village or school district, that provides coverage for a dependent of the insured shall provide coverage of appropriate and necessary immunizations, from birth to the age of **6** years, for a dependent who is a child of the insured.

(c) The coverage required under par. (b) may not be subject to any deductibles, copayments, or coinsurance under the policy or plan. This paragraph applies to a defined network plan, as defined in s. 609.01 (1b), only with respect to appropriate and necessary immunizations provided by providers participating, as defined in s. 609.01 (3m), in the plan.

(d) This subsection does not apply to any of the following:

1. **A** disability insurance policy that covers only certain specified diseases.

2. **A** disability insurance policy that covers only hospital and surgical charges.

3. **A** health care plan offered by a limited service health organization, as defined in s. 609.01 (3), or by a preferred provider plan, as defined in s. 609.01 (4), that is not a defined network plan, as defined in s. 609.01 (1b).

4. **A** long–term care insurance policy, as defined in s. 600.03 (28g).

5. **A** medicare replacement policy, as defined in s. 600.03 (28p).

6. **A** medicare supplement policy, as defined in s. 600.03 (28r).

History: 1981 c. 39 ss. 4 to 12, 18, 20; 1981 c. 85, 99; 1981 c. 314 ss. 122, 123, 125; 1983 a. 36,429; 1985 a. 29, 56, 311; 1987 a. 195, 327,403; 1989 a. 129, 201, 229,316,332, 359; 1991 a. 32, 45, 123; 1993 a. 443,450; 1995 a. 27 ss. 7048, 9126 (19); 1995 a. 201, 225; 1997 a. 27, 35, 75, 175, 237; 1999 a. 32, 115; 1999 a. 150 s. 672: 2001 a. 16.

The commissioner can reasonably construe sub. (3) to require an insurer to pay a facility's charge for care up to the maximum department of health and social services rate. Mutual Benefit v. Insurance Commissioner, 151 Wis. 2d 411, 444 N.W.2d 450 (Ct. App. 1989).

Sub. (2) (g) does not prohibit an insurer from contracting away the right to review medical necessity. The provision does not apply until the insurer has shown that its own determination is relevant to a insurance contract. Schroeder v. Blue Cross & Blue Shield, 153 Wis. 2d 165,450 N.W.2d 470 (Ct. App. 1989).

CHAPTER 767
ACTIONS AFFECTING THE FAMILY

767.24 Custody and physical placement (1) GENERAL PROVISIONS. In rendering a judgment of annulment, divorce, legal separation or paternity, or in rendering a judgment in an action under **s.** 767.02 (1) (e) or 767.62 (3), the court shall make such provisions as it deems just and reasonable concerning the legal custody and physical placement of any minor child of the parties, as provided in this section.

(1m) PARENTING PLAN. In an action for annulment, divorce or legal separation, an action to determine paternity or an action under **s.** 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court before any pretrial conference. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. A parenting plan shall provide information about the following questions:

(a) What legal custody or physical placement the parent is seeking

(b) Where the parent lives currently and where the parent intends to live during the next 2 years. If there is evidence that the other parent engaged in inter-spousal battery, as described under **s.** 940.19 or 940.20 (1m), or domestic abuse, as defined in **s.** 813.12 (1) '(am), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she currently lives and intends to live during the next 2 years

(c) Where the parent works and the hours of employment. If there is evidence that the other parent engaged in inter-spousal battery, as described under **s.** 940.19 or 940.20 (1m), or domestic abuse, as defined in **s.** 813.12 (1) (am), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she works

(d) Who will provide any necessary child care when the parent cannot and who will pay for the child care

(e) Where the child will go to school

(f) What doctor or health care facility will provide medical care for the child

(g) How the child's medical expenses will be paid

(h) What the child's religious commitment will be, if any

(i) Who will make decisions about the child's education, medical care, choice of child care providers and extracurricular activities

(j) How the holidays will be divided

(k) What the child's summer schedule will be

(L) Whether and how the child will be able to contact the other parent when the child has physical placement with the parent providing the parenting plan

(m) How the parent proposes to resolve disagreements related to matters over which the court orders joint decision making

(n) What child support, family support, maintenance or other income transfer there will be

(o) If there is evidence that either party engaged in inter-spousal battery, as described under **s.** 940.19 or 940.20 (lm), or domestic abuse, as defined in **s.** 813.12 (1) (am), with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.

(2) CUSTODY TO PARTY; JOINT OR SOLE (a) Subject to pars(am), (b) and (c), based on the best interest of the child and after considering the factors under sub(5), the court may give joint legal custody or sole legal custody of a minor child

(am) The court shall presume that joint legal custody is in the best interest of the child

(b) The court may give sole legal custody only if it finds that doing so is in the child's best interest and that either of the following applies:

1. Both parties agree to sole legal custody with the same party.

2. The parties do not agree to sole legal custody with the same party, but at least one party requests sole legal custody and the court specifically finds any of the following:

a. One party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child.

b. One or more conditions exist at that time that would substantially interfere with the exercise of joint legal custody.

c. The parties will not be able to cooperate in the future decision making required under an award of joint legal custody. In making this finding the court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody. Evidence that either party engaged in abuse, as defined in **s.** 813.122 (1) (a), of the child, as defined in **s.** 48.02 (2), or evidence of inter-spousal battery, as described under **s.** 940.19 or 940.20 (1m), or domestic abuse, as defined in **s.** 813.12 (1) (am), creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making required

(c) The court may not give sole legal custody to a parent who refuses to cooperate with the other parent if the court finds that the refusal to cooperate is unreasonable.

(3) CUSTODY TO AGENCY OR RELATIVE (a) If the interest of any child demands it, and if the court finds that neither parent is able to care for the child adequately or that neither parent is fit and proper to have the care and custody of the child, the court may declare the child to be in need of protection or services and transfer legal custody of the child to a relative of the child, as defined in **s.** 48.02 (15), to a county department, as defined under **s.** 48.02 (2g), or to a licensed child welfare agency. If the court transfers legal custody of a child under this subsection, in its order the court shall notify the parents of any applicable grounds for termination of parental rights under **s.** 48.415

(b) If the legal custodian appointed under par(a) is an agency, the agency shall report to the court on the status of the child at least once each year until the child reaches 18 years of age, is returned to the custody of a parent or is placed under the guardianship of an agency. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. *An* agency may file an additional report at any time if it determines that more frequent reporting is appropriate. A report shall summarize the child's permanency plan and the recommendations of the review panel under **s.** 48.38 (5), if any

(c) The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par(b). At least 10 days before the date of the hearing, the court shall provide notice of the time, date and purpose of the hearing to the agency that prepared the report, the child's parents, the child, if he or she **is** 12 years of age or over, and the child's foster parent, treatment foster parent or the operator of the facility in which the child is living

(d) Following the hearing, the court shall make all of the determinations specified under **s.** 48.38 (5) (c) and, if it determines that an alternative placement **is** in the child's best interest, may amend the order to transfer legal custody of the child to another relative, other than a parent, or to another agency specified under par(a)

(e) The charges for care furnished to a child whose custody is transferred under this subsection shall be pursuant to the procedure under **s.** 48.36 (1) or 938.36 (1) except as provided in s. 767.29 (3).

(4) ALLOCATION OF PHYSICAL PLACEMENT (a) 1. Except as provided under par(b), if the court orders sole or joint legal

custody under sub(2), the court shall allocate periods of physical placement between the parties in accordance with this subsection.

2. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub(5). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households

(b) **A** child is entitled to periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health

(c) No court may deny periods of physical placement for failure to meet, or grant periods of physical placement for meeting, any financial obligation to the child or, if the parties were married, to the former spouse

(cm) If a court denies periods of physical placement under this section, the court shall give the parent that was denied periods of physical placement the warning provided under s. 48.356

(d) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody and physical placement rights to provide the notice required under s. 767.327 (1).

(5) FACTORS IN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS. In determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. The court shall consider the following factors in making its determination:

(a) The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial

(b) The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional

(c) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest

(cm) The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life–style changes that a parent proposes to make to be able to spend time with the child in the future

(d) The child's adjustment to the home, school, religion and community

(dm) The age of the child and the child's developmental and educational needs at different ages

(e) The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household

(em) The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child

(f) The availability of public or private child care services

(fm) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party

(g) Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party

(h) Whether there is evidence that a party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 ***(2)***

(i) Whether there is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (am)

(j) Whether either party has or had a significant problem with alcohol or drug abuse

(jm) The reports of appropriate professionals if admitted into evidence

(k) Such other factors as the court may in each individual case determine to be relevant.

(6) FINAL ORDER (a) If legal custody or physical placement is contested, the court shall state in writing why its findings relating to legal custody or physical placement are in the best interest of the child

(am) In making an order of joint legal custody, upon the request of one parent the court shall specify major decisions in addition to those specified under s. 767.001 (2m)

(b) Notwithstanding s. 767.001 (1s), in making an order of joint legal custody, the court may give one party sole power to make specified decisions, while both parties retain equal rights and responsibilities for other decisions

(c) In making an order of joint legal custody and periods of physical placement, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purpose of determining eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 or for any other purpose the court considers appropriate

(d) No party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the court expressly authorizes that action

(e) In an order of physical placement, the court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights.

(7) ACCESS TO RECORDS (a) Except under par(b) or unless otherwise ordered by the court, access to a child's medical, dental and school records is available to a parent regardless of whether the parent has legal custody of the child

(b) **A** parent who has been denied periods of physical placement with a child under this section is subject to s. 118.125 **(2)** (m) with respect to that child's school records, s. 51.30 ***(5)*** (bm) with respect to the child's court or treatment records, s. 55.07 with respect to the child's records relating to protective services and s. 146.835 with respect to the child's patient health care records.

(7m) MEDICAL AND MEDICAL HISTORY INFORMATION (a) In making an order of legal custody, the court shall order a parent who is not granted legal custody of a child to provide to the court medical and medical history information that is known to the parent. The court shall send the information to the physician or other health care provider with primary responsibility for the treatment and care of the child, as designated by the parent who is granted legal custody of the child, and advise the physician or other health care provider of the identity of the child to whom the information relates. The information provided shall include all of the following:

1. The known medical history of the parent providing the information, including specific information about stillbirths or congenital anomalies in the parent's family, and the medical histories, if known, of the parents and siblings of the parent and any sibling of the child who is a child of the parent, except that medical history information need not be provided for a sibling of the child if the parent or other person who is granted legal custody of the child also has legal custody, including joint legal custody, of that sibling.

2. **A** report of any medical examination that the parent providing the information had within one year before the date of the order

(am) The physician or other health care provider designated under par(a) shall keep the information separate from other records kept by the physician or other health care provider. The information shall be assigned an identification number and maintained under the name of the parent who provided the information to the court. The patient health care records of the child that are kept by the physician or other health care provider shall include a reference to that name and identification number. If the child's patient health care records are transferred to another physician or other health care provider or another health care facility, the records containing the information provided under par(a) shall be transferred along with the child's patient health care records. Notwithstanding s. 146.819, the information provided under par(a) need not be maintained by a physician or other health care provider after the child reaches age 18

(b) Notwithstanding ss. 146.81 to 146.835, the information shall be kept confidential, except only **as** follows:

1. The physician or other health care provider with custody of the information, or any other record custodian at the request of the physician or other health care provider, shall have access to the information if, in the professional judgment of the physician or other health care provider, the information may be relevant to the child's medical condition.

2. The physician or other health care provider may release only that portion of the information, and only to a person, that the physician or other health care provider determines is relevant to the child's medical condition.

(8) NOTICE IN JUDGMENT. A judgment which determines the legal custody or physical placement rights of any person to a minor child shall include notification of the contents of s. 948.31.

(9) APPLICABILITY. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act 364, the parties may agree to the adjudication of a custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

History: 1971 c. 149,157,211; 1975 c. 39, 122, 200,283; 1977 c. 105,418; 1979 c. 32 ss. 50. 92 (4); 1979 c. 196: Stats. 1979 s. 767.24; 1981 c. 391: 1985 a. 70, 176: 1987 a. 332 s. 64; 1987 a. 355,364,383,403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213,446,481; 1995 a. 77, 100,275,289,343,375; 1997 a. 35, 191; 1999 a. 9; 2001 a. 109.

NOTE: 1987 Wis. Act *355,* which made many changes in this section, contains a "legislative declaration" in section 1 and explanatory notes.

It was reversible error for the court to make a custody award when the court should have recognized the rule of comity and declined to exercise its jurisdiction. Sheridan v. Sheridan, 65 Wis. 2d 504,223 N.W.2d 557 (1974).

As a general matter, the child's best interests will be served by living with a parent. If circumstances compel a contrary conclusion, the interests of the child, not a supposed right of a parent to custody, controls. In a dispute between a father and a deceased mother's parents, the court erred in concluding that it must award custody to a natural parent unless he was unfit or unable to care for the children. LaChapell v. Mawhinney, 66 Wis. 2d 679,225 N.W.2d 501 (1975).

The record of a temporary hearing may be relevant at a divorce hearing, but is not controlling, and neither party has the burden of proving a change in circumstances to warrant a change from the temporary order. Kuesel v. Kuesel, 74 Wis. 2d 636, 247 N.W.2d 72 (1976).

The trial court may not order a custodial parent to live in designated part of the state or else lose custody. Groh v. Groh, 110 Wis. 2d 117, 327 N.W.2d 655 (1983).

In a custody dispute between a parent and a third party, unless the court finds that the parent is unfit or unable to care for the child, or that there are compelling reasons for denying custody to the parent, the court must grant custody to the parent. Barstad v. Frazier, 118 Wis. 2d 549,348 N.W.2d 479 (1984).

A contract between a parent and a non-parent to transfer permanent custody is unenforceable. Interest of Z.J.H. 162 Wis. 2d 1002,471 N.W.2d 202 (1991).

But see Custody of H.S.H-K, 193 Wis. 2d 649,533 N.W.2d 419 (1995) regarding unmarried persons contracting for visitation in a co-parenting agreement. Revision of s. 767.24 to allow joint custody in cases in which both parties did not agree was not a "substantial change in circumstances" justifying a change to joint custody. Licary v. Licary, 168 Wis. 2d 686,484 N.W.2d 371 (Ct. App. 1992).

Section 767.001 (2m) confers the right to choose a child's religion on the custodial parent. Reasonable restrictions on visitation to prevent subversion of this right do not violate the constitution. Lange v. Lange, 175 Wis. 2d 373, N.W.2d (Ct. App. 1993).

There is no authority to order a change of custody at an unknown time in the future upon the occurrence of some stated contingency. Koeller v. Koeller, 195 Wis. 2d 660, 536 N.W.2d 216 (Ct. App. 1995).

A custodial parent's right to make major decisions for the children does not give that parent the right to decide whether the actions of the noncusiodial parent are consistent with those decisions. Wood v. DeHahn, 214 Wis. 2d 221, 571 N.W.2d 186 (Ct. App. 1997).

Neither sub(4) (b) nor s. 767.325 (4) permits a prospective order prohibiting a parent from requesting a change of physical placement in the future. Jocius v. Jocius, 218 Wis. 2d 103,580 N.W.2d 708 (Ct. App. 1998).

Section 813.122 implicitly envisions a change of placement and custody if the trial court issues a child abuse injunction under that section against a parent who has custody or placement of a child under a divorce order or judgment. Scott M.H. v. Kathleen M.H. 218 Wis. 2d 605,581 N.W.2d 564 (Ct. App. 1998).

Sub(5) (b), while requiring consideration of the child's wishes, leaves to the court's discretion whether to allow the child to testify. That the child is a competent witness under s. 906.01 does not affect the court's discretion. Hughes v. Hughes, 223 Wis. 2d 111, 588 N.W.2d 346 (Ct. App. 1998).

Constitutional protections of a parent's right to his or her child do not prevent the application of the best interests of the child standard as the central focus of determining where the child shall live. "Best interests" and "safety" are not synonymous. Richard D. v. Rebecca G. 228 Wis. 2d 658, 599 N.W.2d 90 (Ct. App. 1999).

Sub(4) requires allocation of placement between the parents. Before a court may deny a parent all placement or contact with a child, it must find that the contact would endanger the child's physical, mental or emotional health. A parent who seeks to deny all contact by the other parent has the burden of proving the danger to the child. Wolfe v. Wolfe, 2000 WI App 93, 234 Wis. 2d 449, 610 N.W.2d 222.

There is no presumption of equal placement. While sub(4) (a) 2. requires the court to provide for placement that allows the child to have regularly occurring, meaningful periods of physical placement with each parent, that is not tantamount to a presumption of equal placement. Keller v. Keller, 2002 WI App 161, ___ Wis. 2d ___, 647 N.W.2d 426.

Custody—to which parent? Podell, Peck, First, 56 MLR 51. The best interest of the child doctrine in Wisconsin custody cases. 64 MLR 343 (1980).

Recent Changes in Wisconsin's Law Regarding Child Custodv and Placement. Rue. 2001 WLR 1177.

Debating the Standard in Child Custody Placement Decisions. Molvig. Wis. Law. July 1998. Wisconsin's Custody, Placement and Paternity Reform Legislation. Walther. Wis.Law. April 2000.

767.245 Visitation rights of certain persons (1) Except as provided in subs(1m) and (2m), upon petition by a grandparent, great-grandparent, step-parent or person who has maintained a relationship similar to a parent–child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines that visitation is in the best interest of the child.

(1h) (a) Except as provided in par(b), the court may not grant visitation rights under sub(1) to a person who has been convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(2) Whenever possible, in making a determination under sub(1), the court shall consider the wishes of the child.

(2m) Subsection (3), rather than sub(1), applies to a grandparent requesting visitation rights under this section if sub(3) (a) to (c) applies to the child.

(3) The court may grant reasonable visitation rights, with respect to a child, to a grandparent of the child if the child's parents have notice of the hearing and the court determines all of the following:

(a) The child is a non-marital child whose parents have not subsequently married each other

(b) Except as provided in sub(4), the paternity of the child has been determined under the laws of this state or another jurisdiction if the grandparent filing the petition is a parent of the child's father

(c) The child has not been adopted

(d) The grandparent has maintained a relationship with the child or has attempted to maintain a relationship with the child but has been prevented from doing so by a parent who has legal custody of the child

(e) The grandparent is not likely to act in a manner that is contrary to decisions that are made by a parent who has legal custody of the child and that are related to the child's physical, emotional, educational or spiritual welfare

(f) The visitation is in the best interest of the child.

(3c) A grandparent requesting visitation under sub(3) may file a petition to commence an independent action for visitation under this chapter or may file a petition for visitation in an underlying action affecting the family under this chapter that affects the child.

(3m) (a) A pretrial hearing shall be held before the court in an action under sub(3). At the pretrial hearing the parties may present and cross-examine witnesses and present other evidence relevant to the determination of visitation rights. A record or minutes of the proceeding shall be kept

(b) On the basis of the information produced at the pretrial hearing, the court shall evaluate the probability of granting visitation rights to a grandparent in a trial and shall so advise the parties. On the basis of the evaluation, the court may make an appropriate recommendation for settlement to the parties

(c) If a party or the guardian ad litem refuses to accept a recommendation under this subsection, the action shall be set for trial

(d) The informal hearing under this subsection may be terminated and the action set for trial if the court finds it unlikely that all parties will accept a recommendation under this subsection.

(4) If the paternity of the child has not yet been determined in an action under sub(3) that is commenced by a person other than a parent of the child's mother but the person filing the petition under sub(3) has, in conjunction with that petition, filed a petition or motion under s. 767.45 (1) (k), the court shall make a determination as to paternity before determining visitation rights under sub(3).

(5) Any person who interferes with visitation rights granted under sub(1) or (3) may be proceeded against for contempt of court under ch. 785, except that a court may impose only the

remedial sanctions specified in **s.** 785.04 (1) (a) and (c) against that person.

(6)(a) If a person granted visitation rights with a child under this section is convicted under **s.** 940.01 of the first-degree intentional homicide, or under **s.** 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a parent or guardian of the child, or upon the court's own motion, and upon notice to the person granted visitation rights

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

History: 1971 c. 220; 1977 c. 105 ss. 35, 39; 1979 c. 32 ss. 50, 92 (4); Stats. 1979 s. 767.245; 1983 a. 447,450; 1987 a. 355; 1995 a. 68; 1999 a. 9.

Biological grandparents had no right to visitation following termination of their son's parental rights and adoption by the child's stepfather. Soergel v. Soergel, 154 Wis. 2d 564,453 N.W.2d 624 (1990).

The visitation petition of a custodial parent's widow did not meet the criteria of sub(1) when, prior to the custodial parent's death, the non-custodial parent had filed a motion to revise custody. Section 880.155 governs visitation in the event of a parent's death. Cox v. Williams, 177 Wis. 2d 433, 502 N.W.2d 128 (1993).

A paternity case in which the court has retained postjudgment authority to enforce the judgment constitutes an underlying action under which a petition for grandparent visitation may he brought. Paternity of Nastassja L.H.-J. 181 Wis. 2d 666, 512 N.W.2d 189 (Ct. App. 1993).

An existing underlying action affecting the family does not alone provide standing to petition under this section. The underlying action must threaten the integrity of a family unit. An action under this section does not apply to intact families. Because the father figure in a household was not the biological or adoptive father of one of the children did not mean the family was not intact. Marquardt v. Hegemann-Glascock, 190 Wis. 2d 447,526 N.W.2d 834 (Ct. App. 1994).

This section does not apply outside the dissolution of a mamage, but it does not preempt the consideration of visitation in circumstances not subject to the statute. A circuit court may consider visitation by a non-parent outside a mamage dissolution situation in the best interests of the child if the non-parent petitioner demonstrates a parent-like relationship with the child and shows a significant triggering event such as substantial interference with that relationship. Custody of H.S.H.-K. 193 Wis. 2d 649,533 N.W.2d 419 (1995).

Public policy does not prohibit a court, relying on its equitable powers, to grant visitation outside this section on the basis of a co-parenting agreement between a biological parent and another when visitation is in the child's best interest. Custody of H.S.H.-K. 193 Wis. 2d 649, 533 N.W.2d 419 (1995).

When applying sub(3), circuit courts must apply the presumption that a fit parent's decision regarding grandparent visitation is in the best interest of the child, but the court must still make its own assessment of the best interest of the child. Paternity of Roger D.H. 2002 WI App 35,250 Wis. 2d 747,641 N.W.2d 440.

Grand-parent Visitation Rights. Rothstein. Wis. Law. Nov. 1992. The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992. Third-party Visitation in Wisconsin. Herman & Cooper. Wis. Law. March 2001.

767.325 Revision of legal custody and physical placement orders. Except for matters under **s.** 767.327 or 767.329, the following provisions are applicable to modifications of legal custody and physical placement orders:

(1) SUBSTANTIAL MODIFICATIONS (a) ***Within 2 years after initial order.*** Except as provided under sub(2), a court may not modify any of the following orders before 2 years after the initial order is entered under **s.** 767.24, unless a party seeking the modification, upon petition, motion, or order to show cause shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child:

1. An order of legal custody.

2. ***An*** order of physical placement if the modification would substantially alter the time a parent may spend with his or her child

(b) ***After 2-year period.*** 1. Except as provided under par(a) and sub(2), upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the court finds all of the following:

a. The modification is in the best interest of the child.

b. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

2. With respect to subd. 1., there is a rebuttable presumption that:

a. Continuing the current allocation of decision making under a legal custody order is in the best interest of the child.

b. Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child.

3. A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under subd. 1.

(2) MODIFICATION OF SUBSTANTIALLY EQUAL PHYSICAL PLACEMENT ORDERS. Notwithstanding sub(1): (a) If the parties have substantially equal periods of physical placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, a court, upon petition, motion or order to show cause by a party, may modify such an order if it is in the best interest of the child

(b) In any case in which par(a) does not apply and in which the parties have substantially equal periods of physical placement pursuant to a court order, a court, upon petition, motion or order to show cause of a party, may modify such an order based on the appropriate standard under sub(1). However, under sub(1) (b) 2., there is a rebuttable presumption that having substantially equal periods of physical placement is in the best interest of the child.

(2m) MODIFICATION OF PERIODS OF PHYSICAL PLACEMENT FOR FAILURE TO EXERCISE PHYSICAL PLACEMENT. Notwithstanding subs(1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement at any time with respect to periods of physical placement if it finds that a parent has repeatedly and unreasonably failed to exercise periods of physical placement awarded under an order of physical placement that allocates specific times for the exercise of periods of physical placement.

(3) MODIFICATION OF OTHER PHYSICAL PLACEMENT ORDERS. Except as provided under subs(1) and (2), upon petition, motion or order to show cause by a party, a court may modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the court finds that the modification is in the best interest of the child.

(4) DENIAL OF PHYSICAL PLACEMENT. Upon petition, motion or order to show cause by a party or on its own motion, a court may deny a parent's physical placement rights at any time if it finds that the physical placement rights would endanger the child's physical, mental or emotional health.

(4m) DENIAL OF PHYSICAL PLACEMENT FOR KILLING OTHER PARENT (a) Notwithstanding subs(1) to (4), upon petition, motion or order to show cause by a party or on its own motion, a court shall modify a physical placement order by denying a parent physical placement with a child if the parent has been convicted under **s.** 940.01 of the first-degree intentional homicide, or under **s.** 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that physical placement with the parent would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(5) REASONS FOR MODIFICATION. If either party opposes modification or termination of a legal custody or physical placement order under this section the court shall state, in writing, its reasons for the modification or termination.

(5m) FACTORS TO CONSIDER. In all actions to modify legal custody or physical placement orders, the court shall consider the factors under **s.** 767.24 (5) and shall make its determination in a manner consistent with **s.** 767.24.

(6) NOTICE. No court may enter an order for modification under this section until notice of the petition, motion or order to show cause requesting modification has been given to the child's parents, if they can be found, and to any relative or agency having custody of the child.

(6m) PARENTING PLAN. In any action to modify a legal custody or physical placement order under sub(1), the court may require the party seeking the modification to file with the court a parenting plan under **s.** 767.24 (1m) before any hearing is held.

(7) TRANSFER TO DEPARTMENT. The court may order custody transferred to the department of health and family services only if that department agrees to accept custody.

(8) PETITION, MOTION OR ORDER TO SHOW CAUSE. A petition, motion or order to show cause under this section shall include notification of the availability of information under **s.** 767.081 (2).

(9) APPLICABILITY. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by 1987 Wisconsin Act **364,** the parties may agree to the adjudication of a modification of a legal custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

History: 1987 a. 355,364; 1995 a. 27 s. 9126 (19); 1999 a. 9.

NOTE: 1987 Wis. Act 355, which created **this** section, contains explanatory notes.

"Necessary" implies that a change of custody itself is needed because custodial conditions are harmful in some way to the best interest of the child.. Millikin v. Millikin, 115 Wis. 2d 16, 339 N.W.2d 573 (1983).

The revision of **s.** 767.24 allowing joint custody in cases where both parties did not agree was not a "substantial change in circumstances" justifying a change to joint custody. Licary v. Licary, 168 Wis. 2d 686,484 N.W.2d 371 (Ct. App. 1992).

Sub(1) (a) prohibits a change of custody solely to correct a mother's unreasonable interference with physical placement of the child with the father.

Sub(1) (a) provides a 2–year truce period. Judicial intervention during this period must be compelling. Paternity of Stephanie R.N. 174 Wis. 2d 745, 488 N.W.2d 235 (1993).

"Necessary" embodies at least 2 concepts: 1) that the modification **must** operate to protect the child from alleged harmful custodial conditions, and 2) that the physical or emotional harm threatened by the current custodial conditions must be severe enough to warrant modification. Paternity of Stephanie R.N. 174 Wis. 2d 745, 488 N.W.2d 235 (1993).

Section 767.325 does not limit a court's authority to hold a hearing or enter an order during the 2–year "truce period with the order effective on the conclusion of the truce period. Paternity of Bradford J.B. 181 Wis. 2d 304, 510 N.W.2d 775 (Ct. App. 1993).

There is no authority to order a change of custody at an unknown time in the future upon the occurrence of some stated contingency. Koeller v. Koeller, 195 Wis. 2d 660, 536 N.W.2d 216 (Ct. App. 1995).

Sub(1) (b) is inapplicable in guardianship litigation between a parent and a 3rd party guardian. Howard M. v. Jean R. 196 Wis. 2d **16,** 539 N.W.2d 104 (Ct. App. 1995).

Neither sub(4) nor **s.** 767.24 (4) (b) permits a prospective order prohibiting a parent from requesting a change of physical placement in the future. Jocius v. Jocius, 218 Wis. 2d 103,580 N.W.2d 708 (Ct. App. 1998).

Sections 767.325 and 767.327 do not conflict. If one party files a notification of intention to move under **s.** 767.327, the other parent may file a motion to modify placement under **s.** 767.325, and the court may consider all relevant circumstances, including, but not limited to, the move. Hughes v. Hughes, 223 Wis. 2d 111, 588 N.W.2d 346 (Ct. App. 1998).

The sub(1) prohibition against modification of placement orders applies to both primary placement and physical placement. Trost v. Trost, 2000 WI App 222, 239 Wis. 2d 1, 619 N.W.2d 105.

When a court denies a parent physical placement, it has the authority to impose conditions for regaining placement, which may include mental health treatment, anger management, individual or family counseling, and parenting training. Conditions imposed must be necessary to protect the child from the danger of physical, emotional, or mental harm if the child is placed with the parent. State v. Alice H. 2000 WI App 228,239 Wis. 2d 194,619 N.W.2d 151.

By asking the trial court for what constituted a substantial modification of placement, the movant effectively conceded that there was a substantial change in circumstances to merit placement modification under sub(1) (b) 1. and could not maintain a contrary position on appeal. Keller v. Keller, 2002 WI App 161, ___ Wis. 2d ___, 647 N.W.2d 426.

CHAPTER 880
GUARDIANS AND WARDS

SUBCHAPTER I
GENERAL PROVISIONS

SUBCHAPTER III
UNIFORM TRANSFERS TO MINORS ACT

Cross–reference: See definitions in ch. **851**

SUBCHAPTER I
GENERAL PROVISIONS

880.01 Definitions. For the purpose of this chapter, unless the context otherwise requires:

(l) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, men tally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

(3) "Guardian" means one appointed by a court to have care, custody and control of the person of a minor or an incompetent or the management of the estate of a minor, an incompetent or a spendthrift.

(4) "Incompetent" means a person adjudged by a court of record to be substantially incapable of managing his or her property or caring for himself or herself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.

(5) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her own care or custody.

(6) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the welfare of the person who is to be protected.

(7) "Minor" means a person who has not attained the age of 18 years.

(7m) "Not competent to refuse psychotropic medication" means that, because of chronic mental illness, as defined in s. 51.01 (3g), and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

(a) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

(b) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

(8) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, continued consumption or absorption of substances, producing a condition which substantially impairs an individual from providing for the individual's own care or custody.

(9) "Spendthrift" means a person who because of the use of intoxicants or drugs or of gambling, idleness or debauchery or other wasteful course of conduct is unable to attend to business or thereby is likely to affect the health, life or property of the person or others so as to endanger the support of the person and the person's dependents or expose the public to such support.

(10) "Ward means a subject for whom a guardian has been appointed.

History: **1971** c. **41** s. **8; 1971** c. **228** s. **36; Stats. 1971** s. **880.01; 1973** c. **284; 1975** c. **430; 1981** c. **379; 1985** a. **29** s. **3200 (56); 1985** a. **176; 1987** a. **366; 1993** a. **486; 1995** a. **268.**

Guardianships and Protective Placements. Viney. Wis. **Law.** Aug. **1991.**

880.09 Nomination; selection of guardians. The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

(1) NOMINATION BY MINOR. A minor over 14 years may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is without the state, or if other good reason exists, the court may dispense with the right of nomination.

(2) PREFERENCE. If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under s. 880.35 only if no suitable individual guardian is available.

(3) EFFECT OF NOMINATION BY MINOR. If neither parent is suitable and willing, the court may appoint the nominee of a minor.

(4) GUARDIAN OF THE PERSON NOMINATED BY WILL. Subject to the rights of a surviving parent, a parent may by will nominate a guardian of the person of his or her minor child.

(5) GUARDIAN OF THE ESTATE NOMINATED BY WILL. A parent may by will nominate a guardian of the estate of the parent's minor child and may waive the requirement of a bond **as** to such estate derived through the will.

(6) TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his or her minor children who are in need of guardianship. For a person over the age of IS found to be in need of guardianship under s. 880.33 by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian.

(7) ANTICIPATORY NOMINATION; PREFERENCE. Any person other than a minor may, at such time as the person has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner **as** the execution of a will under s. 853.03, nominating a person to be appointed as guardian of his or her person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.09; 1973 c. 284; 1975 c. 393; 1977 c. 449; 1993 a. 486.

The nomination by a parent unfit to be his children's guardian should be weighed by the court. In re Guardianship of Schmidt, 71 Wis. 2d 317,237 N.W.2d 919.

880.33 Incompetency; appointment of guardian.

(1) Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. The privilege under s. 905.04 shall not apply to this statement. A copy of the statement shall be provided to the proposed ward, guardian ad litem and attorney. Prior to the examination, under this subsection, of a person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall also be informed that he or she has a right to remain silent and that the examiner is required to report to the court even if the person remains silent. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner.

(2) (a) 1. The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition contains the allegations under s. 880.07 (1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

2. If the person requests but is unable to obtain legal counsel, the court shall appoint legal counsel. If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent the person.

3. If the person is an adult who is indigent, the county of legal settlement shall be the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the person's legal counsel. If the person is a minor, the person's parents or the county of legal settlement shall be liable for any fees due the guardian ad litem as provided in s. 48.235 (8

(b) If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(d) The hearing on a petition which contains allegations under s. 880.07 (1m) shall be held within 30 days after the date of filing of the petition, except that if a jury trial demand is filed the hearing shall be held within either 30 days after the date of filing of the petition or 14 days after the date of the demand for a jury trial, whichever is later. A finding by a court under s. 51.67 that there is probable cause to believe that the person is a proper subject for guardianship under s. 880.33 (4m) has the effect of filing a petition under s. 880.07 (1m).

(e) Every hearing on a petition under s. 880.07 (1m) shall be open, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present.

(3) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to hold or convey property and the right to contract. The findings of incompetence must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.

(4) When it appears by clear and convincing evidence that the person is incompetent, the court shall appoint a guardian.

(4m) (a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations under s. 880.07 (1m) are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

(b) In any case where the court finds that the person is not competent to refuse psychotropic medication under s. 880.07 (1m) and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

2. Review the plan submitted by the county department under subd. 1., and approve, disapprove or modify the plan.

2m. If the court modifies the treatment plan under subd. 2., the court shall order the appropriate county department under s. 46.23, 51.42 or 51.437 to provide the modified treatment plan to the ward.

3. Order protective services under ch. 55.

4. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to ensure that protective services, including psychotropic medication, are provided under ch. 55, in accordance with the approved treatment plan.

(4r) If a person substantially fails to comply with the administration of psychotropic medication, if any, ordered under the approved treatment plan under sub. (4m), a court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:

(a) The corporation counsel of the county or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person or a designated staff member of the appropriate county department under s. 46.23, 51.42 or 51.437, stating that the person has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

(b) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

1. Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

2. If the guardian consents to forcible administration of psychotropic medication as specified in subd. 1., authorize the sheriff or other law enforcement agency, in the county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

(c) If the court authorizes a sheriff or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the appropriate county department under **s.** 46.23, 51.42 or 51.437 or of the treatment facility shall, if feasible, accompany the sheriff or other law enforcement agency officer and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

(5) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian.

(5m) No person, except a nonprofit corporation approved by the department of health and family services under **s.** 880.35, who has guardianship of the person of 5 or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of more than 10 such wards unrelated to the person.

(6) **All** court records pertinent to the finding of incompetency are closed but subject to access as provided in **s.** 55.06 (17). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

(7) A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with **s.** 55.06.

(8) At the time of determination of incompetency under this section, the court may:

(a) Hear application for the appointment of a conservator or limited guardian of property.

(b) If the proposed incompetent has executed a power of attorney for health care under ch. 155, find that the power of attorney for health care instrument should remain in effect. If the court so finds, the court shall so order and shall limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.

(9) **All** the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to register to vote or to vote in an election by reason that the person is or is not capable of understanding the objective of the elective process. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under **s.** 6.48, 6.92, 6.925 or 6.93 with the responsibility for determining challenges to registration and voting which may be directed against that elector. The determination may be reviewed as provided in s. 880.34 (4) and *(5)* and any subsequent determination of the court shall be likewise communicated by the clerk of court.

History: 1973 c. 284; 1975 c. 393,421, 1977 c. 29,187; 1977 **c.** 203 s. 106; 1977 c. 299, 318, 394, 418, 447; 1979 c. 110, 356; 1981 c. 379; 1987 a. 366; Sup. Ct. Order, 151 Wis. 2d xxii, xxxiv; 1989 a. 200, **Sup.** Ct. Order, 153 Wis. 2d xxim xxv (1989); 1991 a. 32, 39; 1993 a. 16, 316; 1995 a. 27 s. 9126 (19); Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1997 a. 237.

Judicial Council **Note, 1990:** Sub. (3) is amended by striking reference to the right to testify in judicial or administrative proceedings. The statute conflicts with s. 906.01, as construed in State v. Hanson, 149 Wis. 2d 474 (1989) and State v. Dwyer, 149 Wis. 2d 850 (1989). [Re Order eff. 1–1–91]

A "common sense" finding of incompetency was insufficient for placement under **s.** 55.06. If competent when sober, an alcoholic has the right to choose to continue an alcoholic lifestyle. Guardianship & Protective Placement of Shaw, 87 Wis. 2d 503, 275 N.W.2d 143 (Ct. App. 1979).

The written report **of** a physician or psychologist under (sub. 1) is hearsay and not admissible in a contested hearing without in-court testimony of the preparing expert. In Matter of Guardianship **of** R.S. 162 Wis. 2d 197,470 N.W.2d 260 (1991).

A guardian may not he given authority to forcibly administer psychotropic drugs to a ward. An order for the forcible administration of psychotropic drugs may only he made in a ch. 51 proceeding. State ex rel. Roberta S. v. Waukesha DHS, 171 Wis. 2d 266,491 N.W.2d 114 (Ct. App. 1992).

The expenses of a guardian ad litem in guardianship proceedings are correctly assessed to the ward under s. 757.48. Assessment of the costs of a medical expert are within the discretion of the court. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998).

The statutory provisions for an interested person's formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence or raise evidentiary objections. A court could consider such participation helpful and in its discretion allow an interested person to participate to the extent it considers appropriate. Coston v. Joseph P. 222 Wis. 2d 1,586 N.W.2d 52 (Ct. APP. 1998).

Sub. (6) requires the closing only of documents filed with the register in probate with respect to ch. 880 proceedings. 67 Atty. Gen. 130.

A guardian has general authority to consent to medication for a ward, hut may consent to psychotropic medication only in accordance with ss. 880.07 (lm) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5–99.

880.70 Accounting by and determination of liability of custodian.

(1) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court:

(a) For an accounting by the custodian or the custodian's legal representative; or

(b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under s. 880.69 to which the minor or the minor's legal representative was a party.

(2) **A** successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under ss. 880.61 to 880.72 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under s. 880.695 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: 1987 a. 191.

880.705 Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of 21 years of age with respect to custodial property transferred under s. 880.625 or 880.63;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under s. 880.635 or 880.64; or

(3) The minor's death.

History: 1987 a. 191.

880.71 Applicability. Sections 880.61 to 880.72 apply to a transfer within the scope of s. 880.615 made after April 8, 1988, if:

(1) The transfer purports to have been made under **ss.** 880.61 to 880.71, 1985 stats.; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of **ss.** 880.61 to 880.72 is necessary to validate the transfer.

History: 1987 a. 191.

880.715 Effect on existing custodianships.

(1) Any transfer of custodial property as defined in ss. 880.61 to 880.72 made before April 8, 1988, is validated notwithstanding that there was no specific authority in ss. 880.61 to 880.71, 1985

stats., for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) Sections 880.61 to 880.72 apply to all transfers made before April 8, 1988, in a manner and form prescribed in ss. 880.61 to 880.71, 1985 stats., except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on April 8, 1988.

(3) Sections 880.61 to 880.705 with respect to the age of a minor for whom custodial property is held under ss. 880.61 to 880.72 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after March 23, 1972 and before April 8, 1988.

(4) To the extent that ss. 880.61 to 880.72, by virtue of sub. (2), do not apply to transfers made in a manner prescribed in ss. 880.61 to 880.71, 1985 stats., or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of ss. 880.61 to 880.71, 1985 stats., does not affect those transfers, powers, duties and immunities.

History: 1987 a. 191.

880.72 Uniformity of application and construction. Sections 880.61 to 880.72 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ss. 880.61 to 880.72 among states enacting it.

History: 1987 a. 191.

CHAPTER *895*
MISCELLANEOUS GENERAL PROVISIONS

895.70 Sexual exploitation by a therapist. (1) DEFINITIONS. In this section:

(a) "Physician" has the meaning designated in s. 448.01 *(5)*.

(b) "Psychologist" means a person who practices psychology, as described in s. 455.01 *(5)*.

(c) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(d) "Sexual contact" has the meaning designated in **s.** 940.225 *(5)*(b).

(e) "Therapist" means a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) CAUSE OF ACTION. (a) Any person who suffers, directly or indirectly, a physical, mental or emotional injury caused by, resulting from or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling or other assessment or treatment of or involving any mental or emotional illness, symptom or condition has a civil cause of action against the psychotherapist for all damages resulting from, arising out of or caused by that sexual contact. Consent is not an issue in an action under this section, unless the sexual contact that is the subject of the action occurred more than 6 months after the psychotherapy, counseling, assessment or treatment ended.

(b) Notwithstanding ss. 801.09 (1), 801.095, 802.04 (1) and 815.05 (1g) (a), in an action brought under this section, the plaintiff may substitute his or her initials, or fictitious initials, and his or her age and county of residence for his or her name and address on the summons and complaint. The plaintiffs attorney shall supply the court the name and other necessary identifying information of the plaintiff. The court shall maintain the name and other identifying information, and supply the information to other parties to the action, in a manner that reasonably protects the information from being disclosed to the public.

(c) Upon motion by the plaintiff, and for good cause shown, or upon its own motion, the court may make any order that justice requires to protect:

1. A plaintiff who is using initials in an action under this section from annoyance, embarrassment, oppression or undue burden that would arise if any information identifying the plaintiff were made public.

2. A plaintiff in an action under this section from unreasonably long, repetitive or burdensome physical or mental examinations.

3. The confidentiality of information which under law is confidential, until the information is provided in open court in an action under this section.

(3) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person bringing an action under this section.

(4) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is subject to s. 893.585. (

(5) SILENCE AGREEMENTS. Any provision in a contract or agreement relating to the settlement of any claim by a patient against a therapist that limits or eliminates the right of the patient to disclose sexual contact by the therapist to a subsequent therapist, the department of regulation and licensing, the department of health and family services, the patients compensation fund peer review council or a district attorney is void.

History: 1985 a. 275; 1987 a. 352; 1991 a. 160, 217; 1995 a. 27 s. 9126 (19); 1999 a. 85.

Under sub. (2) consent is not an issue and, as such, an instruction regarding the victim's contributory negligence was improper. Block v. Gomez, 201 Wis. 2d 795, 549 N.W.2d 783 (Ct. App. 1996).

This section grants no cause of action against a therapist's employer. L.L.N. v. Clauder, 203 Wis. 2d 570, 552 N.W.2d 879 (Ct. App. 1996)

895.73 Service representatives. (1) DEFINITIONS. In this section:

(a) "Abusive conduct" means domestic abuse, as defined under s. 46.95 (1) (a), 813.12 (1) (am), or 968.075 (1) (a), harassment, as defined under **s.** 813.125 (1), sexual exploitation by a therapist under s. 940.22, sexual assault under **s.** 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss. 948.02 to 948.11.

(b) "Complainant" means an adult who alleges that he or she was the subject of abusive conduct or who alleges that a crime has been committed against him or her.

(c) "Service representative" means an individual member of an organization or victim assistance program who provides counseling or support services to complainants or petitioners and charges no fee for services provided to a complainant under sub. *(2)* or to apetitioner under s. 813.122.

(2) RIGHT TO BE PRESENT. A complainant has the right to select a service representative to attend, with the complainant, hearings, depositions and court proceedings, whether criminal or civil, and all interviews and meetings related to those hearings, depositions and court proceedings, if abusive conduct is alleged to have occurred against the complainant or if a crime is alleged to have been committed against the complainant and if the abusive conduct or the crime is a factor under **s.** 767.24 or is a factor in the complainant's ability to represent his or her interest at the hearing, deposition or court proceeding. The complainant shall notify the court orally, or in writing, of that selection. A service representative selected by a complainant has the right to be present at every hearing, deposition and court proceeding and all interviews and meetings related to those hearings, depositions and court proceedings that the complainant is required or authorized to attend. The service representative selected by the complainant has the right to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, deposition or court proceeding and related interviews and meetings, except when the complainant is testifying or is represented by private counsel. The service representative may not sit at counsel table during a jury trial. The service representative may address the court if permitted to do so by the court.

(3) FAILURE TO EXERCISE RIGHT NOT GROUNDS FOR APPEAL. The failure of a Complainant to exercise a right under this section is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

History: 1991 a. 276; 1995 a. 220; 2001 a. 109.

CHAPTER 905

EVIDENCE — PRIVILEGES

NOTE: Extensive comments by the Judicial Council Committee and the Federal Advisory Committee are printed with chs. 901 to 911 in 59 Wis. 2d. The court did not adopt the comments but ordered them printed with the rules for information purposes.

905.01 Privileges recognized only as provided. Except as provided by or inherent or implicit in statute or in rules adopted by the supreme court or required by the constitution of the United States or Wisconsin, no person has a privilege to:

(1) Refuse to be a witness; or

(2) Refuse to disclose any matter; or

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

History: Sup. Ct. Order, 59 Wis. 2d RI, R101 (1973).

This section precludes courts from recognizing common law privileges not contained in the statutes, or the U.S. or Wisconsin constitutions. Privileges and confidentialities granted by statute are strictly interpreted. Davison v. St. Paul Fire & Marine Insurance Co. 75 Wis. 2d 190,248 N.W.2d 433 (1977).

A defendant did not have standing to complain that a physician's testimony violated the witness's physician/patient's privilege under s. 905.04; the defendant was not authorized to claim the privilege on the patient's behalf. State v. Echols, 152 Wis. 2d 725,449 N.W.2d 320 (Ct. App. 1989).

As s. 907.06 (1) prevents a court from compelling an expert to testify, it logically follows that a litigant should not be able to so compel an expert and a privilege to refuse to testify is implied. Burnett. v. Alt, 224 Wis. 2d 72,589 N.W.2d 21 (1999).

905.015 Interpreters for persons with language difficulties, limited English proficiency, or hearing or speaking impairments. If an interpreter for a person with a language difficulty, limited English proficiency, as defined in s. 885.38 (1) (b), or a hearing or speaking impairment interprets as an aid to a communication which is privileged by statute, rules adopted by the supreme court, or the U.S. or state constitution, the interpreter may be prevented from disclosing the communication by any person who has a right to claim the privilege. The interpreter may claim the privilege but only on behalf of the person who has the right. The authority of the interpreter to do so is presumed in the absence of evidence to the contrary.

History: 1979 c. 137; 1985 a. 266: 2001 a. 16.

905.02 Required reports privileged by statute. A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if provided by law. A public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the retum or report if provided by law. No privilege exists under this section in actions involving false swearing, fraudulent writing, fraud in the return or report, or other failure to comply with the law in question.

History: Sup. Ct. Order, 59 Wis. 2d RI, R109 (1973).

This section applies only to privileges specifically and unequivocally provided by law against the disclosure of specific materials. Davison v. St. Paul Fire & Marine Insurance Co. 75 Wis. 2d 190,248 N.W.2d 433 (1977).

905.03 Lawyer–client privilege. (1) DEFINITIONS As used in this section:

(a) A "client" is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(b) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(c) A "representative of the lawyer" is one employed to assist the lawyer in the rendition of professional legal services.

(d) A communication is "confidential" if not intended to be disclosed to 3rd persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(2) GENERAL RULE OF PRIVILEGE. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client: between the client or the client's representative and the client's lawyer or the lawyer's representative; or between the client's lawyer and the lawyer's representative; or by the client or the client's lawyer to a lawyer representing another in a matter of common interest; or between rcprescntatives of the client or between the client and a rcpresentativc of the client; or between lawyers representing the client.

(3) WHO MAY CLAIM THE PRIVILEGE The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. The lawyer's authority to do so is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS. There is no privilege under this rule:

(a) *Furtherance of crime or fraud.* If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the clicnt knew or reasonably should have known to be a crime or fraud; or

(b) *Claimants through same deceased client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; or

(c) *Breach of duty by lawyer or client.* As to a communication relevant to an issue of breach of duty by the lawyer to the lawyer's client or by the client to the client's lawyer; or

(d) *Document attested by lawyer.* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(e) *Joint clients.* As to a communication relevant to a matter of common interest between 2 or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

History: Sup. Ct. Order, 59 Wis. 2d R1, R111 (1973); 1991 a.32.

That there was a communication from a client to an attorney is insufficient to find the communication is privileged. Jax v. Jax, 73 Wis. 2d 572,243 N.W.2d 831 (1975).

There is not a general exception to the lawyer–client privilege in legal malpractice cases. The extent of the privilege is discussed. Dyson v. Hempe, 140 Wis. 2d 792, 413 N.W.2d 379 (Ct. App. 1987).

When a defendant alleges ineffective assistance of counsel, the lawyer–client privilege is wived to the extent that counsel must answer questions relevant to the allegation. State v. Flores, 170 Wis. 2d 272,488 N.W.2d 116 (Ct. App. 1992).

A litigant's request to see his or her file that is in the possession of current or former counsel does not waive the attorney–client and work product privileges and does not allow other parties to the litigation discovery of those files. Borgwardt v. Redlin, 196 Wis. 2d 342,538 N.W.2d 581 (Ct. App. 1995).

Waiver of attorney–client privilege is not limited to direct attacks on attorney performance. An attempt to withdraw a plea on the grounds that it was not knowingly made raised the issue of attorney performance and resulted in a waiver of the attorney–client privilege. State v. Simpson, 200 Wis. 2d 798,548 N.W.2d 105 (Ct. App. 1996).

Attorney–client privilege is not waived hy a broadly worded insurance policy cooperation clause in a coverage dispute. There is not a common interest exception to the privilege when the attorney was not consulted in common by two clients. State v. Hydrite Chemical Co. 220 Wis. 2d 51,582 N.W.2d 411 (Ct. App. 1998).

The attorney–clientprivilege is waived when the privilege holder attempts to prove a claim or defense by disclosing or describing an attomey–client communication. State v. Hydrite Chemical Co. 220 Wis. 2d 51,582 N.W.2d 411 (Ct. App. 1998).

A videotaped interview of a crime victim conducted by the alleged perpetrator's spouse was not privileged as attorney communication because it was made in the presence of a 3rd–party, the victim, and was not confidential. Estrada v. State, 228 Wis. 2d 459,596 N.W.2d 496 (Ct. App. 1999).

A former director cannot act on behalf of the client corporation and waive the lawyer–client privilege. Even though documents were created during the former director's tenure as a director, a former director is not entitled to documents in the corporate lawyer's files. Lane v. Sharp Packaging Systems, 2002 WI 28, 251 Wis. 2d 68,640 N.W.2d 788.

Billing records are communications from the attorney to the client, and producing those communications violates the lawyer–client privilege if production of the documents reveals the substance of lawyer–client communications. Lane v. Sharp Packaging Systems, 2002 WI 28,251 Wis. 2d 68, 640 N.W.2d 788.

The test for invoking the crime–fraud exception under sub. (4) (a) is whether there is reasonable cause to believe that the attorney's services were utilized in furtherance of the ongoing unlawful scheme. If a prima facie case is established. an in camera review of the requested documents is required to determine if the exception applies. Lane v. Sharp Packaging Systems, 2002 WI 28,251 Wis. 2d 68,640 N.W.2d 788.

Both present and former counsel may testify on the issue of a defendant's competency to proceed to trial. In close cases, particularly if concerns of malingering are present, a competency determination may depend on opinions of counsel. State v. Meeks, 2002 WI App 65,251 Wis. 2d 361,643 N.W.2d 526.

Attomey–client privilege in Wisconsin. Stover and Koesterer. 59 MLR 227.

Attomey–client privilege: Wisconsin's approach to exceptions. 72 MLR 582 (1989).

905.04 Physician–patient, registered nurse–patient, chiropractor–patient, psychologist–patient, social worker–patient, marriage and family therapist–patient and professional counselor–patient privilege. (1) DEFINITIONS. In this section:

(a) "Chiropractor" means a person licensed under s. 446.02, or a person reasonably believed by the patient to be a chiropractor.

(b) A communication or information is "confidential" if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication or information or persons who are participating in the diagnosis and treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor, including the members of the patient's family.

(bm) "Marriage and family therapist" means an individual who is licensed as a marriage and family therapist under ch. 457 or an individual reasonably believed by the patient to be a marriage and family therapist.

(c) "Patient" means an individual, couple, family or group of individuals who consults with or is examined or interviewed by a physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

(d) "Physician" means a person as defined in s. 990.01 (28), or reasonably believed by the patient so to bc.

(dm) "Professional counselor" means an individual who is licensed as a professional counselor under ch. 457 or an individual reasonably believed by the patient to be a professional counselor.

(e) "Psychologist" means a licensed psychologist, as that term is defined in s. 455.01 (4), or a person reasonably believed by the patient to be a psychologist.

(f) "Registered nurse" means a nurse who is licensed under s. 441.06 or licensed as a registered nurse in a party state, as defined in s. 441.50 (2) (j), or a person reasonably believed by the patient to be a registered nurse.

(g) "Social worker" means an individual who is certified or licensed as a social worker, advanced practice social worker, independent social worker, or clinical social worker under ch. 457 or an individual reasonably believed by the patient to be a social worker, advanced practice social worker, independent social worker, or clinical social worker.

(2) GENERAL RULE OF PRIVILEGE A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, the patient's physician, the patient's registered nurse, the patient's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social workcr, marriage and family therapist or professional counselor.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician, registered nurse, chiropractor, psychologist, social worker, mamage and family therapist or professional counselor may claim the privilege but only on behalf of the patient. The authority so to do is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS (a) ***Proceedings for hospitalization, guardiunship, protective services or protective placement.*** There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian under s. 880.33, for court–ordered protective services or protective placement or for review of guardianship, protective services or protective placement orders, if the physician, registered nurse, chiropractor, psychologist, social worker. marriage and family therapist or professional counselor in the course of diagnosis or treatment has dctcrmined that the patient is in need of hospitalization, guardianship, protective services or protective placement.

(am) ***Proceedings for guardianship.*** There is no privilege under this rule as to information contained in a statement concerning the mental condition of the patient furnished to the court by a physician or psychologist under s. 880.33 (1).

(b) ***Examination by order of judge.*** If the judge orders an examination of the physical, mental or emotional condition of the patient, or evaluation of the patient for purposes of guardianship, protective services or protective placement, communications made and treatment records reviewed in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) *Condition an element of claim or defense.* There is no privilege under this section as to communications relevant to or within the scope of discovery examination of an issue of the physical, mental or emotional condition of a patient in any proceedings in which the patient relies upon the condition as an element of the patient's claim or dcfcnse, or, after the patient's death, in any pro-

ceeding in which any **party** relies upon the condition as an element of the party's claim or defense.

(d) *Homicide trials.* There is no privilege in trials for homicide when the disclosure relates directly to the facts or immediate circumstances of the homicide.

(e) *Abused or neglected child or abused unborn child.* 1. In this paragraph:

a. "Abuse" has the meaning given in **s.** 48.02 (1).

b. "Neglect" has the meaning given in **s.** 48.981 (1) (d).

2. There is no privilege in situations where the examination of an abused or neglected child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the abuse or neglect was other than accidentally caused or inflicted by another.

3. There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self–control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or alcohol concentration, as defined in **s.** 340.01 (1v).

(g) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child under ss. 767.45 to 767.53.

(h) *Reporting wounds and burn injuries.* There is no privilege regarding information contained in a report under **s.** 146.995 pertaining to a patient's name and type of wound or bum injury.

(i) *Providing services to court in juvenile matters.* There **is** no privilege regarding information obtained by an intake worker or dispositional staff in the provision of services under **s.** 48.067, 48.069, 938.067 or 938.069. An intake worker or dispositional staff member may disclose information obtained while providing services under **s.** 48.067 or 48.069 only as provided in **s.** 48.78 and may disclose information obtained while providing services under **s.** 938.067 or 938.069 only as provided in **s.** 938.78.

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61,418; 1979 c. 32 s. 92 (1); 1979 c. 221,352; 1983 a. 400,535; 1987 a 233,264; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a 98; 1995 a. 77, 275, 436; 1997 a. 292: 1999 a. 22; 2001 a. 80.

Sub. (4) (a) applies to proceedings to extend a commitment under the sex crimes act. State v. Hungerford, 84 Wis. 2d 236,267 N.W.2d 258 (1978).

By entering a plea of not guilty by reason of mental disease or defect. the defendant lost the physician–patient privilege by virtue of **s.** 905.04 (4) (c) and the confidentiality of treatment records under s. 51.30 (4) (b) 4. State v. Taylor, 142 Wis. 2d 36,417 N.W.2d 192 (Ct. App. 1987).

A psychotherapist's duty to 3rd parties for dangerous patients' intentional behavior is discussed. Schuster v. Altenberg, 144 Wis. 2d 223,424 N.W.2d 159 (1988).

A defendant did not have standing to complain that a physician's testimony violated a witness's physician-patient's privilege under s. 905.04; the defendant was not authorized to claim the privilege on the patient's behalf. State v. Echols, 152 Wis. 2d 725,449 N.W.2d 320 (Ct. App. 1989).

Under sub. (4) (g), the history of a pregnancy is discoverable. The court may permit discovery of the history as long as information regarding the mother's sexual relations outside of the conceptive period is eliminated. In re Paternity of J.S.P. 158 Wis. 2d 100,461 N.W.2d 794 (Ct. App. 1990).

Because under sub. (4) (f) there is no privilege for chemical tests for intoxication, the results of a test taken for diagnostic purposes are admissible in an OMVWI trial. City of Muskego v. Godec, 167 Wis. 2d 536,482 N.W.2d 79 (1992).

A patient's mere presence in a physician's office is not within the ambit of this privilege. A defendant charged with trespass to a medical facility, **s.** 943.145, is entitled to compulsory process to determine if any patients present at the time of the alleged incident had relevant evidence. State v. *Migliorino,* 170 Wis. 2d 576,489 N.W.2d 678 (Ct. App. 1992).

To be entitled to an in camera inspection of privileged records. a criminal defendant must show that the sought after evidence is relevant and may be necessary to a fair determination of guilt or innocence. Failure of the record's subject to agree to inspection is grounds for sanctions, including suppressing the record subject's testimony. State v. Shiffra, 175 Wis. 2d 600,499 N.W.2d 719 (Ct. App. 1993).

The patient's objectively reasonable expectations of confidentiality from the medical provider are the proper gauge of the privilege. State v. Locke, 177 Wis. 2d 590, 502 N.W.2d 891 (Ct. App. 1993).

When a patient's medical condition is at issue the patient–client privilege gives way. Wikrent v. Toys " R **Us,** 179 Wis. 2d 297,507 N.W.2d 130 (Ct. App. 1993).

Ex parte contacts between several treating physicians after the commencement of litigation did not violate this section. This section applies only to judicial proceedings and places restrictions on lawyers, not physicians. Limited ex parte contacts between defense counsel and plaintiff's physicians are permissible. hut ex parte discovery is not. Steinberg v. Jensen, 194 Wis. 2d 440,534 N.W.2d 361 (1995).

There is no general exception to privileged status for communications gathered from incarcerated persons. State v. Joseph P. 200 Wis. 2d 227,546 N.W.2d 494 (Ct. App. 1996).

Both initial sex offender commitment and discharge hearings under ch. 980 are "proceedings for hospitalization" within the exception to the privilege under sub. (4) (a). State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301 (Ct. App. 1997).

A party may not challenge on appeal an in camera review of records conducted at his own request. State **v.** Darcy N. K. 218 W (d) 640,581 N.W.2d 567 (Ct. App. 1998).

This section does not regulate the conduct of physicians outside of a courtroom. Accordingly it does not give a patient the right to exclude others from a treatment area. State v. Thompson, 222 Wis. 2d 179,585 N.W.2d 905 (Ct. App. 1998).

When a motion has been made seeking a minor victim's health care records, the state shall give notice to the victim and the victim's parents, providing a reasonable time to object to the disclosure. If the victim does not expressly consent to disclosure, the state shall not waive the materiality hearing under Schiffra. Jessica J.L. v. State, 223 Wis. 2d 622,589 N.W.2d 660 (Ct. App. 1998).

The psychotherapist–patient privilege does not automatically or absolutely foreclose the introduction of a therapeutic communication. When a therapist had reasonable cause to believe a patient was dangerous and that contacting police would prevent harm and facilitate the patient's hospitalization, the patient's statements fell within a dangerous patient exception to the privilege. State v. Agacki, 226 Wis. 2d 349,595 N.W.2d **31** (Ct. App. 1999).

Under the *Schiffra* test, an *in camera* inspection of the victim's mental health records was allowed. The defendant established more than the mere possibility that the requested records might he necessary for a fair determination of guilt or innocence. State v. Walther, 2001 WI App 23,240 Wis. 2d 619,623 N.W.2d 205.

Release of records containing information of previous assaultive behavior by a nursing home resident was not prohibited by the physician–patient privilege. A nursing home resident does not have a reasonable expectation of privacy in assaultive conduct. The information may he released by court order. Crawford v. Care Concepts, Inc. 2001 WI App 45,243 Wis. 2d 119,625 N.W.2d 876.

An in camera inspection of confidential records under Schiffra is not restricted to mental health records. State v. Navarro, 2001 WI App 225,248 Wis. 2d 396,636 N.W.2d 481.

The preliminary showing for an in camera review of a victim's mental health records requires a defendant to set forth. in good faith, a specific factual basis demonstrating a reasonable likelihood that the records contain relevant information necessary to a determination of guilt or innocence and **is** not merely cumulative of other evidence available to the defendant. The information will he "necessary to a determination of guilt or innocence" if it "tends to create a reasonable doubt that might not otherwise exist. State v. Green, 2002 WI 68,253 Wis. 2d 356,646 N.W.2d 298.

The privilege under this section is not a principle of substantive law, **but** merely an evidentiary rule applicable at all stages of civil and criminal proceedings, except actual trial on the merits in homicide cases. 64 Atty. Gen. 82.

A person claiming a privilege in a communication with a person who was not a medical provider under sub. (1) (d) to (g) has the burden of establishing that he or she reasonably believed the person to be a medical provider. U.S. v. Schwenson, 942 F. Supp. 902 (1996).

905.045 Domestic violence or sexual assault advocate–victim privilege. (1) DEFINITIONS.

In this section:

(a) "Abusive conduct" means abuse, as defined in **s. 8** 13.122 (1) (a), of a child, as defined in **s.** 48.02 (2), interspousal battery, as described under **s.** 940.19 or 940.20 (lm), domestic abuse, as defined in s. 813.12 (1) (am), or sexual assault under **s.** 940.225.

(b) "Advocate" means an individual who is an employee of or a volunteer for an organization the purpose of which is to provide counseling, assistance, or support services free of charge to a victim.

(c) A communication or information is "confidential" if not intended to be disclosed to 3rd persons other than persons present to further the interest of the person receiving counseling, assistance, or support services, persons reasonably necessary for the transmission of the communication or information, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, including family members of the person receiving counseling, assistance, or support services and members of any group of individuals with whom the person receives counseling, assistance, or support services.

(d) "Victim" means an individual who has been the subject of abusive conduct or who alleges that he or she has been the subject

of abusive conduct. It is immaterial that the abusive conduct has not been reported to any government agency.

(2) GENERAL RULE OF PRIVILEGE. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated among the victim, an advocate who is acting in the scope of his or her duties as an advocate, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the victim, by the victim's guardian or conservator, or by the victim's personal representative if the victim is deceased. The advocate may claim the privilege on behalf of the victim. The advocate's authority to do so is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS. Subsection (2) does not apply to any report concerning child abuse that an advocate is required to make under s. 48.981.

(5) RELATIONSHIP TO S. 905.04. If a communication or information that is privileged under sub. **(2)** is also a communication or information that is privileged under s. 905.04 (2), the provisions of s. 905.04 supersede this section with respect to that communication or information.

History: 2001 a. 109.

905.05 Husband–wife privilege. (1) GENERAL RULE OF PRIVILEGE. A person has a privilege to prevent the person's spouse or former spouse from testifying against the person as to any private communication by one to the other made during their marriage.

(2) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the person or by the spouse on the person's behalf. The authority of the spouse to do so is presumed in the absence of evidence to the contrary.

(3) EXCEPTIONS. There is no privilege under this rule:

(a) If both spouses or former spouses are parties to the action.

(b) In proceedings in which one spouse or former spouse is charged with a crime against the person or property of the other or of a child of either, or with a crime against the person or property of a 3rd person committed in the course of committing a crime against the other.

(c) In proceedings in which a spouse or former spouse is charged with a crime of pandering or prostitution.

(d) If one spouse or former spouse has acted as the agent of the other and the private communication relates to matters within the scope of the agency.

History: Sup. Ct. Order, 59 Wis. 2d R1, R130 (1973); 1991 a. 32.

Cross–reference: As to testimony of husband and wife in paternity action regarding child born in wedlock, see s. 891.39.

A wife's testimony as to statements made by her husband was admissible when the statements were made in the presence of 2 witnesses. Abraham v. State, 47 Wis. 2d 44, 176 N.W.2d 349 (1970).

Spouses can be compelled to testify as to whether the other was working or collecting unemployment insurance, since such facts are known to 3rd persons. Kain v. State, 48 Wis. 2d 212. 179 N.W.2d 777 (1970).

A wife's observation, without her husband's knowledge, of her husband's criminal act committed on a public street was neither a "communication" nor "private" within meaning of sub. (1). State v. Sabin, 79 Wis. 2d 302. 255 N.W.2d 320 (1977).

"Child" under sub. (3) (b) includes a foster child. State v. Michels, 141 Wis. 2d 81, 414 N.W.2d 311 (Ct. App. 1987).

905.06 Communications to members of the clergy. (1) DEFINITIONS. As used in this section:

(a) A "member of the clergy" is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual.

(b) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(2) GENERAL RULE OF PRIVILEGE. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the member's professional character as a spiritual adviser.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The member of the clergy may claim the privilege on behalf of the person. The member of the clergy's authority so to do is presumed in the absence of evidence to the contrary.

History: Sup. Ct. Order, 59 Wis. 2d R1, R135 (1973); 1991 a. 32.

An out–of–court disclosure by a priest that the defendant would lead police to the victim's grave was not privileged under this section. State v. Kunkel, 137 Wis. 2d 172, 404 N.W.2d 69 (Ct. App. 1987).

The privilege under sub. (1) belongs to the person against whom testimony is being offered. While an accused may invoke the privilege to prevent his or her spouse from testifying against him or her, the witness spouse may not not invoke it to prevent his or her own testimony. Umhoefer v. Police and Fire Commission of the City of Mequon, 2002 WI App 217, ___ Wis. 2d ___, 652 N.W.2d 412.

Should Clergy Hold the Priest–Penitent Privilege? Mazza. 82 MLR 171 (1998).

905.065 Honesty testing devices. (1) DEFINITION. In this section, "honesty testing device" means a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty.

(2) GENERAL RULE OF TIE PRIVILEGE. A person has a privilege to refuse to disclose and to prevent another from disclosing any oral or written communications during or any results of an examination using an honesty testing device in which the person was the test subject.

(3) WHO MAY CLAIM PRIVILEGE. The privilege may be claimed by the person, by the person's guardian or conservator or by the person's personal representative, if the person is deceased.

(4) EXCEPTION. There is no privilege under this section if there is a valid and voluntary written agreement between the test subject and the person administering the test.

History: 1979 c. 319.

A distinction exists between an inquiry into the taking of a polygraph and an inquiry into its results. An offer to take a polygraph is relevant to an assessment of an offeror's credibility. State v. Wofford, 202 Wis. 2d 524, 551 N.W.2d 46 (Ct. App. 1996).

The results of polygraph examinations are inadmissible in civil cases. While an offer to to take a polygraph examination may he relevant to the offeror's credibility, that a person agreed to a polygraph at the request of law enforcement has not been found admissible and could not he without proof that the person believed the results would accurately indicate whether he or she was lying. Estate of Neumann v. Neumann, 2000 WI App 61, 242 Wis. 2d 205, 626 N.W.2d 821.

905.07 Political vote. Every person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

History: Sup. Ct. Order, 59 Wis. 2d R1, R139 (1973); 1991 a. 32.

905.08 Trade secrets. A person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret as defined in s. 134.90 (1) (c), owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

History: Sup. Ct. Order, 59 Wis. 2d R1, R140 (1973); 1985 a. 236.

905.09 Law enforcement records. The federal government or a state or a subdivision thereof has a privilege to refuse to disclose investigatory files, reports and returns for law enforcement purposes except to the extent available by law to a person other than the federal government, a state or subdivision thereof.

The privilege may be claimed by an appropriate representative of the federal government, a state or a subdivision thereof.

History: Sup. Ct. Order, 59 Wis. 2d R1, R142 (1973).

905.10 Identity of informer. (1) RULE OF PRIVILEGE. The federal government or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(2) WHO MAY CLAIM. The privilege may be claimed by an appropriate representative of the federal government, regardless of whether the information was furnished to an officer of the government or of a state or subdivision thereof. The privilege may be claimed by an appropriate representative of a state or subdivision if the information was fiirnished to an officer thereof.

(3) EXCEPTIONS. (a) *Voluntary disclosure; informer a witness.* No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the federal government or a state or subdivision thereof.

(b) *Testimony on merits.* If it appears from the evidence in the case or from other showing by a party that an informer may be able to give testimony necessary to a fair determination of the issue of guilt or innocence in a criminal case or of a material issue on the merits in a civil case to which the federal government or a state or subdivision thereof is a party, and the federal government or a state or subdivision thereof invokes the privilege, the judge shall give the federal government or a state or subdivision thereof an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits but the judge may direct that testimony be taken if the judge finds that the matter cannot be resolved satisfactorily upon affidavit. If the judge finds that there is a reasonable probability that the informer can give the testimony, and the federal government or a state or subdivision thereof elects not to disclose the informer's identity, the judge on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the judge may do so on the judge's own motion. In civil cases, the judge may make an order that justice requires. Evidence submitted to the judge shall be sealed and preserved to bc made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the federal government, state or subdivision thereof. All counsel and parties shall be permitted to be present at every stage of proceedings under this subdivision except a showing in camera at which no counsel or party shall be permitted to be present.

(c) *Legality of obtaining evidence.* If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, the judge may require the identity of the informer to be disclosed. The judge shall on request of the federal government, state or subdivision thereof, direct that the disclosure be made in camera. All counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this subdivision except a disclosure in camera at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the appropriate federal government, state or subdivision thereof

History: Sup. Ct. Order, 59 Wis. 2d R1, R143 (1973); 1991 a. 32.

The trial judge incorrectly determined whether an informer's testimony was necessary to a fair trial. The proper test is whether the testimony the informer can give is relevant to an issue material to the defense and necessary to the determination of guilt or innocence. it is not for the judge to determine whether the testimony will be helpful. State v. Outlaw, 108 Wis. 2d 112, 321 N.W.2d 145 (1982).

The application of the informer privilege to communications tending to identify the informer and consideration by the trial court under sub. (3) (c) of the privileged information in determining reasonable suspicion for an investigative seizure is discussed. State v. Gordon. 159 Wis. 2d 335, 464 NW 91 (Ct. App. 1990).

When the defendant knew an informant's identity but sought to put the informant's role as an informant before the jury to support his defense that the informant actually committed the crime. the judge erred in not permitting the jury to hear the evidence. State v. Gerard, 180 Wis. 2d 327, 509 N.W.2d 112 (Ct. App. 1993).

The state is the holder of the privilege; disclosure by an informer's attorney is not "by the informer's own action." The privilege does not die with the informer. State v. Lass, 194 Wis. 2d 592, 535 N.W.2d 904 (Ct. App. 1995).

The trial court erred when upon fniding affidavits of confidential informants it, on its won initiative and without contacting either party's attorney, requested additional information from law enforcement. Under the statute, if affidavits are insufficient, the court must hold an in camera hearing and take the testimony of the informants to determine if their testimony is relevant and material to the defendant's defense. State v. Vanmanivong, 2001 WI App 299, 249 Wis. 2d 350, 638 N.W.2d 348.

When there was sufficient evidence in the record to permit a rational court to conclude that a reasonable probability existed that the informant could provide relevant testimony necessary. to a fair determination on the issue of guilt or innocence, the decision to forego an in camera hearing was within the discretion of the trial court. State v. Norfleet, 2002 WI App 140, 254 Wis. 2d 569, 254 N.W.2d 569.

905.11 Waiver of privilege by voluntary disclosure. A person upon whom this chapter confers a privilege against disclosure of the confidential matter or communication waives the privilege if the person or his or her predecessor, while holder of the privilege, voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This section does not apply if the disclosure is itself a privileged communication.

History: Sup. Ct Order, 59 Wis. 2d R1 .R150 (1973); 1987 a 355; Sup. Ct. Order No. 9343, 179 Wis. 2d xv (1993).

Testimony of an accomplice who waived her privilege is admissible even though she had not been tried or granted immunity. State v. Wells, 51 Wis. 2d 477, 187 N.W.2d 328 (1971).

A litigant's request to see his or her file that is in the possession of current or former counsel does not waive the attorney–client and work product privileges and does not allow other parties to the litigation discovery of those files. Borgwardt v. Redlin, 196 Wis. 2d 342, 538 N.W.2d 581 (Ct. App. 1995).

905.12 Privileged matter disclosed under compulsion or without opportunity *to* claim privilege. Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if the disclosure was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

History: Sup. Ct. Order, 59 Wis. 2d RI, R151 (1973).

905.13 Comment upon or inference from claim of privilege; instruction. (1) COMMENTOR INFERENCE NOT PERMITTED. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

(2) CLAIMING PRIVILEGE WITHOUT KNOWLEDGE OF JURY. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(3) JURY INSTRUCTION. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

(4) APPLICATION; SELF–INCRIMINATION. Subsections (1j to (3j do not apply in a civil case with respect to the privilege against self–incrimination.

History: Sup. Ct. Order, 59 Wis. 2d R1, R153 (1973); 1981 c. 390.

The prohibition against allowing comments on or drawing an inference from a 3rd–party witness's refusal to testify on 5th amendment grounds does not deny a criminal defendant's constitutional right to equal protection. State v. Heft, 185 Wis. 2d 289, 517 N.W.2d 494 (1994).

905.14 Privilege in crime victim compensation proceedings. (1) Except as provided in sub. (2), no privilege under this chapter exists regarding communications or records relevant to an issue of the physical, mental or emotional condition of the claimant or victim in a proceeding under ch. 949 in which that condition is an element.